TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 25

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

VIRGINIA ELECTRIC AND POWER COMPANY

No. 26

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 12, 1941
CERTIORARI GRANTED MARCH 31, 1941

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 25

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

VIRGINIA ELECTRIC AND POWER COMPANY

No. 26

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

INDEX

	Original	Print
Proceedings before National Labor Relations Board	1	1
Charge, Case No. V-C-373	1	1
Amended charge, Case No. V-C-373	2	2
Charge, Case No. V-C-349	3	4
Charge, Case No. V-C-139	5	6
Amended charge, Case No. V-C-139	6	7
Order of consolidation	7	8
Complaint and notice of hearing	8	9
Answer to complaint	16	14
Motion of Independent Organization of Employees for leave to intervene	25	20
Letter granting leave to intervene	28	21
Amended charge, Case No. V-C-349	29	22
Motion to amend complaint	32	24

416133—41——1

Proceedings before National Labor Relations Board—Continued.

	Original	Print
Amended answer to complaint	34	25
Statement of evidence	1	27
Caption and appearances	1	27
Offer of pleadings	5	28
Board's witnesses:		
Jack G. Holtzclaw	11	30
Exhibit No. 3—Letter to employees, April 26, 1937	28	35
Anthony R. Reutt	150	61
Offer of motion to amend complaint	421	89
Robert E. Elliott, Jr.	448	92
Everard M. Mann	711	139
Raymond Hugh Hopkins	769	146
E. L. King	791	153
Theodore Frederick Reitzinger	848	157
Joseph Bolton	864	160
Jesse M. Smith	886	160
Ambrose Kenneth Fowler	914	168
Alfred Fleming Staunton	944	172
Robert E. Elliott, Jr. (recalled)	999	181
Abram Davis	1009	183
Johnnie L. Judge	1065	187
Joseph C. Ross	1198	198
Mrs. Dorothy Aline Martin	1211	198
T. N. Harrell, Jr.	1225	202
Edward Henry Heath	1377	223
P. L. Atkins, Jr.	1446	232
Robert E. Elliott, Jr. (recalled)	1474	236
Thomas H. Latham	1522	244
Jesse M. Smith (recalled)	1530	245
Stipulation re Board's exhibit 36	1540	247
Respondent's witnesses:		
Montelle C. Smith	1555	248
T. Norman Jones, Jr.	1826	314
R. J. Throckmorton	2033	349
E. A. Bishop	2199	385
Raymond G. Carroll	2340	412
Wm. E. Edwards	2381	418
Jack G. Holtzclaw (recalled)	2494	426
Ambrose Kenneth Fowler (recalled)	2669	469
Hubert R. Fields	2722	474
Joseph F. Tomlinson	2735	476
J. C. Tweedy	2837	481
Lora P. Wallace	2861	481
Jack W. Davenport	2898	489
S. R. Whitehurst	2942	494
Hunter E. Winn	2969	495
S. D. Abernathy	3008	495

	Original	Print
Proceedings before National Labor Relations Board—Continued		
Statement of evidence—Continued.		
Respondent's witnesses—Continued.		
Stipulation re respondent's exhibit No. 42	3076	506
Augustus B. Carpenter	3084	506
George E. Winn	3145	512
Theodore F. May	3171	514
Wm. T. Crafton	3347	534
Abe Goldsticker	3375	539
Wm. T. Crafton (recalled)	3385	542
Wm. V. Holik	3464	553
John S. McFall	3563	569
Raymond G. Carroll (recalled)	3603	570
Jack G. Holtzclaw (recalled)	3641	572
Intervener's witnesses:		
Wm. W. Faust	3664	574
Paul D. Brown	4128	674
Wallace O. Morris	4337	695
D. M. Tatem	4408	703
N. R. Jones	4515	721
C. Gale Wallace	4576	729
Malcolm K. Crockett	4599	731
James W. Gunter	4619	732
Colin G. Steele	4635	733
Malcolm K. Crockett (recalled)	4643	735
Arthur E. Bertolett	4668	739
Eugene T. Underwood	4838	760
George A. Roberson	4996	780
George Colonies (stipulated)	5035	787
N. Staughton (stipulated)	5035	787
R. K. Milburn (stipulated)	5036	787
J. F. Butler (stipulated)	5037	788
McCamie D. Hough	5038	788
Walter E. Holzbach	5059	796
McCamie D. Hough (recalled)	5116	800
H. C. Rountree (stipulated)	5208	806
Carl D. Boyce (stipulated)	5236	807
B. O. Parke (stipulated)	5236	807
L. D. Edwards (stipulated)	5238	808
McCamie D. Hough (recalled)	5241	809
Paul T. Dewick (affidavit)	5362	841
J. E. Rawls (affidavit)	5365	812
J. B. Walker (affidavit)	5366	813
C. B. Bratten (affidavit)	5367	813
W. T. Crafton (recalled)	5371	814
Testimony of Jesse White Cole (witness for respondent	5376	815
Everard M. Mann (recalled) [witness for Board]	5388	816
Jesse M. Smith (recalled) [witness for Board]	5393	818
E. A. Bishop (recalled) [witness for Respondent]	5413	819

Proceedings before National Labor Relations Board—Continued.
Statement of evidence—Continued.
Board's exhibits:

	Original	Print
4—Company bulletin re formation of bargaining agency	5470	822
5—Letter, Underwood to Holtzclaw, July 19, 1937	5473	823
6—Letter, Holtzclaw to Underwood, July 21, 1937	5474	824
7 and 7 a—Letter, Underwood to Holtzclaw, July 26, 1937, and attached list of I. O. E. members	5475	825
9—I. O. E. contract, Aug. 5, 1937	5477	826
19—Minutes of Petersburg meeting, June 3, 1937	5500	839
20—Minutes of Norfolk meeting, June 7, 1937	5503	841
26—I. O. E. membership card	5505	843
33—Letter, Knight to Harrell, March 30, 1938	5506	843
36—I. O. E. constitution	5507	844
39—Letter, Bertolett to Williams, June 14, 1937	5522	855
40 a and 40 b—Letter, Williams to Bertolett, June 15, 1937, and attached statement	5524	857
41—Company bulletin, Oct. 28, 1937	5526	858
51—Letter, Bertolett to Walsh, Oct. 27, 1937	5527	859
53—Letter, Williams to Underwood, Aug. 20, 1937	5528	860

Respondent's exhibits:

7—Company bulletin, June 24, 1937	5529	860
9—Company bulletin, Nov. 4, 1937	5530	861
11—Newspaper articles	5533	862
13-a and 13-b—Letter, White to Moore, July 27, 1937, and attached statement	5550	872
14—Statement of discussion of contract negotiations between I. O. E. and company	5553	874
20-B—Pay roll advice card showing removal of R. E. Elliott	5566	878
22—List of second and third class linemen as of March 31, 1938	5567	879
24-b to 24-d inc.—Pay roll advice cards	5569	879
25-g—Pay roll advice card showing removal of Alfred E. Staunton	5573	880
26—Personnel record—C. E. Dunbar	5574	880
27—Accident report, Nov. 1, 1937	5575	881
28—Statement of Robert E. Elliott, Nov. 26, 1937	5576	882
35—Medical report, Nov. 19, 1937	5577	883
36—Copy of speech to employees re N. R. A.	5578	883
46—Accident summary—E. M. Mann	5586	888

	Original	Print
Proceedings before National Labor Relations Board—Continued.		
Statement of evidence—Continued.		
Intervenor's exhibits—		
3-a to 3-g, inc.—Petition and minutes of May 26, 1937	5591	888
4—Minutes of June 1, 1937	5597	889
6—Minutes of June 11, 1937	5598	889
7—Minutes of June 16, 1937	5600	891
8—Minutes of June 22, 1937	5601	891
9—Minutes of June 28, 1937	5602	892
10—Minutes of July 13, 1937	5603	893
15—Minutes of July 13, 1937	5605	895
16-a to 16-f inc.—Minutes of July 17, 1937	5606	896
17—Minutes of July 26, 1937	5612	901
19-a to 19-s, inc.—Minutes of distribution and construction meetings	5614	903
20-a and 20-b—Statements showing employees in attendance at meetings, May 24, 1937	5632	914
22—Minutes of June 15, 1937	5634	915
23—List of representatives and grievancemen Norfolk district	5639	920
24—List of representatives and grievancemen Richmond district	5643	923
28—Letter addressed to employees, June 8, 1937	5646	925
29—Memorandum of certain demands	5647	926
30—Minutes of meeting, Aug 4, 1937	5648	926
31—Minutes of meeting, June 14, 1937	5649	927
32—Notice of meeting of steering committee, May 29, 1937	5650	928
33—Minutes of meeting, June 1, 1937	5651	928
34—Minutes of meeting, June 2, 1937	5655	931
35—Minutes of meeting, June 9, 1937	5656	932
36—Invoice, June 16, 1937	5658	934
37—Invoice, June 28, 1937	5659	934
38—Minutes of meeting, June 23, 1937	5660	934
39—Minutes of meeting, June 29, 1937	5664	938
40—Minutes of meeting, July 6, 1937	5669	943
41—Minutes of meeting, July 6, 1937	5670	944
42—Minutes of meeting, July 16, 1937	5675	948
Decision and order	5679	953
Statement of case	5680	953
Findings of fact	5682	956
Conclusions of law	5697	977
Order	5698	978
Proceedings in U. S. C. C. A., Fourth Circuit	5701	981
Petition of Virginia Electric and Power Co. for review of order of Board—Case No. 4616	5701	981

	Original	Print
Answer of Board and request for enforcement, Case No. 4616	5728	996
Petition of I. O. E. for review of Order of Board – Case No. 4652	5735	1000
Answer of Board, Case No. 4652	5743	1004
Opinion, Parker, J.	5749	1005
Decree, Case No. 4616	5769	1019
Decree, Case No. 4652	5771	1020
Clerk's certificate [omitted in printing]	5773	1021
Stipulation as to record on petition for writ of certiorari	5774	1021
Orders allowing certiorari	5776	1022
Stipulation as to record on writ of certiorari	5778	1023

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

Case No. V–C–373

In the Matter of VIRGINIA ELECTRIC AND POWER COMPANY, NORFOLK, VIRGINIA, *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Charge

Filed April 2, 1938

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Virginia Electric and Power Company, Norfolk, Virginia, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) and (3) of said Act, in that officials of the Company have used their influence and offices to have employees of the Company join a union called "Independent Organization of Employees of the Virginia Electric and Power Company"; that one Horlick, official of the company, addressed a meeting of employees on company property and on company time, and requested that they organize and send a representative to him; that one Tom Crafton, official of the company, made a man join this independent organization as a condition to get a raise in wages; that the safety engineer, in an official capacity, questioned men regarding their Union activities and caustically criticized the elected officers of the International Brotherhood of Electrical Workers Union; that men have been transferred from gang to gang, made to work with Negroes and told they were under the hammer because of affiliation with the International Brotherhood of Electrical Workers and various split-ups made; that one A. F. Staunton was discharged in the month of November 1937 for refusal to join the company-dominated Union and that further, T. M. Harrell, Jr., and J. L. Judge, members of the International Brotherhood of Electrical Workers were discharged for their activities as Union members of the International Brotherhood of Electrical Workers in the month of April 1938.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

[SEAL] INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
T. H. LATHAM,
Int. Rep., 715 Pilot View St., Winston-Salem, N. C.

Subscribed and sworn to before me this 1st day of April 1938, Winston-Salem, N. C.,

Z. D. JACKSON, *N. P.*

My commission expires Dec. 13, 1938.

2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIFTH REGION

Case No. V-C-373

In the Matter of VIRGINIA ELECTRIC AND POWER COMPANY, NORFOLK, VIRGINIA, *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS.

Amended charge

Filed April 13, 1938

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Virginia Electric and Power Company, Norfolk, Virginia, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1), (2), and (3) of said Act, in that the said company, on or about May 24, 1937, and subsequent thereto, by and through its officers, agents, and employees, did cause to be formed the "Independent Organization of Employees of the Virginia Electric and Power Company," a labor organization of its employees, and has since dominated and interfered with the administration of the said Independent Organization of Employees of the Virginia Electric and Power Company, by permitting one Horlick, an official of the company, to address its employees with respect to union organization on the property of the company and during working hours; by requiring, as a condition of employment and for wage increases, membership therein; by permitting its officers, agents, and employees to solicit members dur-

ing working hours and on company property, and by rendering other aid, support, and assistance to said organization.

That during November 1937 the said company, by and through its officers, agents, and employees, did discharge A. F. Staunton, employed by the Virginia Electric and Power Company in its Norfolk, Virginia, plant, because the said A. F. Staunton refused to become a member of the Independent Organization of Employees of the Virginia Electric and Power Company; did, during April 1938, discharge T. M. Harrell, Jr., and J. L. Judge, both and each of them being employees of the Virginia Electric and Power Company in its Norfolk, Virginia, plant, because of their affiliation with and membership in the International Brotherhood of Electrical Workers, a labor organization of the employees of the said Virginia Electric and Power Company, and because they engaged in concerted activities with fellow employees for the purpose of collective bargaining and other mutual aid and protection.

That the said company, during August 1937 and subsequent thereto, by and through its officers, agents, and employees, and specifically through its Safety Engineer, has questioned its employees regarding their union affiliation and activities, and criticized the officers of the International Brotherhood of Electrical Workers; that employees who were members of the International Brotherhood of Electrical Workers have been transferred from gang to gang, made to work with Negroes and discriminated against by various other ways and means; by reason whereof the said company did thereby discourage and is discouraging the membership of its employes in the said International Brotherhood of Electrical Workers.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
By THOMAS H. LATHAM.
715 Pilot View St., Winston-Salem, N. C.

Subscribed and sworn to before me this 9th day of April 1938, at Winston-Salem, N. C.

Z. D. JACKSON, *N. P.*

3 BEFORE THE NATIONAL RELATIONS BOARD

FIFTH REGION

Case No. V-C-349

In the Matter of VIRGINIA ELECTRIC & POWER COMPANY, A CORPORATION *and* AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, AN UNINCORPORATED ASSOCIATION

Charge

Filed Feb. 23, 1938

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Virginia Electric & Power Company, a corporation, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) of said Act, in that—

1. Virginia Electric & Power Company, a corporation organized and doing business under the laws of the State of Virginia, and doing business in the State of North Carolina, is engaged in commerce between the states, in that said Company furnishes electric light and power service at retail to over three hundred seventy-five communities in Tidewater Virginia and northeastern North Carolina, including Richmond, Norfolk, Portsmouth, Petersburg, Williamsburg, Tappahannock, Suffolk, Hopewell, Smithfield, Fredericksburg, and Ashland, Virginia, and Weldon, Roanoke Rapids, Battleboro, Aulander, Williamston, Winton, Columbia, Plymouth, Rich Square, and Ahoskie, North Carolina, and surrounding territories, having an aggregate estimated population of about seven hundred fifty-five thousand persons; and in addition to the said cities and communities served at retail, eight communities with a population of about twenty-five thousand are served at wholesale. Said Company does the entire gas business in Norfolk, operates a coordinated street railway and bus service in Richmond and Norfolk, bus service in Portsmouth and Petersburg and operates an interurban bus service between Richmond and Petersburg; said Company maintains and operates a generating and distributing station at Roanoke Rapids, North Carolina, Williamsburg, Virginia, and a distributing system at Vir-

4 ginia Beach, Virginia, and owns extensive riparian rights on the Tappahannock River. Said Company generates

electric energy in Virginia and transmits same across the State line into North Carolina for distribution, and likewise generates electric energy in North Carolina and transmits same into Virginia for distribution. Said Company employs in excess of three thousand persons.

2. Amalgamated Association of Street, Electric and Motor Coach Employees of America is a labor organization and a voluntary unincorporated association affiliated with the American Federation of Labor and it brings this charge on behalf of a number of employees of said Company, including employees whose work relates to the generation and distributing of power affecting interstate commerce.

3. The Virginia Electric & Power Company, the corporation aforesaid, in order to defeat the right of its employees to organize and to form, join, and assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities, for the purpose of collective bargaining and other mutual aid and protection did establish, foster, and dominate a so-called labor organization called the Independent Organization of Employees of the Virginia Electric & Power Company.

4. At all times since its formation, the said Company has dominated and interfered with the administration of said Independent Organization of Employees of the Virginia Electric & Power Company and is still continuing and intends to continue to interfere and dominate and contribute support to said organization, all of which said activities constitute unfair labor practices. This Company union is composed of all employees including those in the power department, and the said corporation requires all employees including those in the power department to join said Company union.

The undersigned further charges that said unfair labor practices affecting commerce within the meaning of said Act.

CHARLTON OGBURN,
Attorney for Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, 68 William Street, New York, N. Y.

Subscribed and sworn to before me this 21st day of February 1938.

ETHEL LANGE, *Notary Public.*

5 BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

Case No. V–C–139

In the Matter of VIRGINIA ELECTRIC & POWER COMPANY *and* TRANSPORT WORKERS UNION OF AMERICA

Charge

Filed July 20, 1937

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that the Virginia Electric and Power Company in Norfolk, Virginia, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of said Act, in that on or about May 30, 1937, Everard M. Mann was discharged from service with the Virginia Electric and Power Company by the superintendent of the Transportation Department, Mr. E. A. Bishop.

For several months prior to his discharge Everard M. Mann had discussed unions and the necessity for our group of men to organize and join some national union. He discussed this subject openly, frankly, and without hesitation.

About a month before his discharge a company union was created and several meetings were held on the company's property. At all of these meetings Everard M. Mann spoke up and denounced the company union and was free in his advocation to join a national labor union.

Although at the time of his discharge E. M. Mann had not joined any union mainly because there was no union organizer in Norfolk, he was anxious to do so but never had the opportunity. Since the time of his discharge nearly two hundred men in our unit have joined a national union and I have been elected president of our local.

The same day that Mr. E. A. Bishop discharged E. M. Mann, Mr. Bishop told me and several others that the reason he had "fired Mann was because he had failed to put a 'Mr.' in front of the superintendent's name" when he was talking about the superintendent to some of the other men in our unit.

I am sure that E. M. Mann meant no disrespect in the least when he failed to put a "Mr." in front of Mr. Bishop's name because a great number of the men even go so far as to call him "Captain Ed" and have been doing so for many years.

The Virginia Electric and Power Company has discharged many men in the past for trying to talk up a union and now I

as well as many other employees in my unit are confident that the real reason Everard M. Mann was discharged was due to his efforts to get the men to join a national union and also to put a scare into the rest of the men so that they would join no union except the one created by the company.

Every day employees are being coerced and threatened that if they join any save the company's union they will be fired.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

[SEAL] ROBERT E. ELLIOTT, JR.,
President of the Norfolk local of the Transport Workers Union of America,
144 Westover Ave.

Subscribed and sworn to before me this 17th day of July 1937.

R. M. PRICE, III.

My commission expires 6-7-38.

6 BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

Case No. V-C-139

In the Matter of VIRGINIA ELECTRIC & POWER CO. *and* TRANSPORT WORKERS UNION OF AMERICA

Amended charge

Filed Aug. 26, 1937

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Virginia Electric and Power Company, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) (2) and (3) of said Act, in that—

1. On or about May 30th, 1937, by its officers, agents and employees, and particularly E. A. Bishop, superintendent of the Transportation Department, did discharge Everard M. Mann, because he aided in the formation of the Transport Workers Union of America, a labor organization of the employees of the Virginia Electric and Power Company, and because he engaged in other concerted activities for the purposes of collective bar-

gaining and other mutual aid and protection and thereby discouraged the said Everard M. Mann from joining the aforesaid Transport Workers Union of America.

2. On or about May 24, 1937, it, by its officers, agents, and employees did cause to be formed the Independent Organization of Employees of Virginia Electric and Power Company, a labor organization of its employees, and has since dominated and interfered with the administration of the said Independent Organization of Employees of Virginia Electric and Power Company by allowing and encouraging meetings to be held on company property May 11th, May 27th, May 28th, May 29th, and June 1st, 1937; by allowing Gene Underwood, secretary to superintendent of production, to be chairman of the wage scale committee of the said Independent Organization of Employees of Virginia Electric and Power Company; by allowing officials of the Independent Organization to solicit membership on company time and company property.

3. It is discouraging membership in the Transport Workers Union of America by letters and bulletins to employees from J. G. Holtsclaw, President of the Virginia Electric & Power Company, and other officials of the Company further discouraged membership in the said Transport Workers Union by posting editorial clippings opposed to organized labor on company bulletin boards.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

TRANSPORT WORKERS UNION OF AMERICA.
By MONT CRUM,
C. I. O. Representative,
804 Bankers Trust Building, Norfolk, Va.

Subscribed and sworn to before me this 25th day of August 1937, at Norfolk, Va.

IDA MAE DAIL, *Notary Public.*

7 BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. V–C–139—Case No. V–C–373—Case No. V–C–349

[Title omitted.]

Order of consolidation

Charges having been duly filed in these cases and the Board having considered the matter,

It is hereby ordered that, pursuant to the Rules and Regulations of the National Labor Relations Board, Series 1, as amended, these cases be and they hereby are consolidated for the purpose of hearing.

Dated, Washington, D. C., this 13th day of April 1938.

By direction of the Board:

NATHAN WITT,
Nathan Witt,
Secretary.

[SEAL]

8 BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

Case No. V-C-139—Case No. V-C-349—Case No. V-C-373

[Title omitted.]

Complaint

It having been charged by the Transport Workers Union of America, the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, an unincorporated association, and the International Brotherhood of Electrical Workers, that the Virginia Electric & Power Company, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449 (hereinafter called the Act), the National Labor Relations Board, by its Regional Director for the Fifth Region, as agent of the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations, Series 1, as
9 amended, hereby issues its Complaint and alleges the following:

1. The respondent is, and has been since October 27, 1925, a corporation organized and existing by virtue of the Laws of the State of Virginia, and has been since that time, and is now, engaged in the generation and distribution of electric power, the manufacture and distribution of illuminating gas, and street railway transportation.

2. The respondent, in the course and conduct of its operations, has maintained, and does now maintain, generating stations for the production of electric power at Richmond, Virginia, Norfolk, Virginia, Fredericksburg, Virginia, Petersburg, Virginia, Roanoke Rapids, North Carolina, and Tarboro, North Carolina, and has been, and is now, engaged in the distribution of electric power so generated in the States of Virginia and North Carolina, maintaining for the purposes of such distribution an intercon-

nected and integrated system of high-tension and other distribution wires in the States of Virginia and North Carolina. The said distribution system is interconnected with the distribution systems of other electric generating and distributing companies operating in States of the United States other than the State of Virginia.

3. In the course of its operations as above described, the respondent has caused, and continuously causes, large quantities of electric power to be transmitted from its generating stations in the State of Virginia over its distribution system into States of the United States other than the State of Virginia, and has caused, and continuously causes, large amounts of power to be transmitted from the generating and distributing systems of companies located in States of the United States other than the State of Virginia, and from its own generating stations located in the States of the United States other than the State of Virginia, to its distribution and generating system in the State of Virginia.

10 4. The generating and distributing system of the respondent above described is the sole source of power for large industries located in the industralized area of Eastern Virginia and Eastern North Carolina; and for the operation of instrumentalities of interstate commerce, including railroads, aids to navigation, radio communications, telegraph communications, coaling stations, and others.

5. The respondent has, for a long period of time, operated, and continues to operate, a plant at Norfolk, Virginia, for the manufacture and distribution of illuminating gas serving the Norfolk area; and has for a long period of time operated, and continues to operate, a coordinated street railway and bus service at Richmond, Virginia; Norfolk, and Portsmouth, Virginia; Petersburg, Virginia, and an interurban bus service between Richmond, Virginia, and Petersburg, Virginia, for the transportation of passengers and the United States Mails.

6. The operations of the respondent, above described in paragraphs 1, 2, 3, 4, and 5, are conducted as an integrated enterprise under common direction, management and control.

7. The Transport Workers Union of America, the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, an unincorporated association, the International Brotherhood of Electrical Workers, and the Independent Organization of Employees of the Virginia Electric & Power Company, are labor organizations as defined in Section 2, subdivision 5 of the said Act.

8. The respondent, by its officers, agents, and employees, while engaged as above described, did, on or about November 15, 1937,

terminate the employment of A. F. Staunton, employed by it at its Norfolk, Virginia, generating station, and has since refused to reemploy the said A. F. Staunton because of his membership in and affiliation with the International Brotherhood of Electrical Workers, and because of his refusal to become a member of the Independent Organization of Employees of the Virginia Electric & Power Company, and because he engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

9. The respondents, by its officers, agents, and employees, while engaged as above described, did, on or about April 20, 1938, terminate the employment of T. M. Harrell, Jr., employed by it at its Norfolk, Virginia, generating station; did, on or about April 20, 1938, terminate the employment of J. L. Judge, employed by it at its Norfolk, Virginia, generating station, and has since refused to re-employ the said T. M. Harrell, Jr., and J. L. Judge because of their membership in and affiliation with the International Brotherhood of Electrical Workers, and because they engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

10. The respondent, by its officers, agents, and employees, while engaged as above described, did, on or about May 30, 1937, terminate the employment of Everard M. Mann, employed at its Norfolk Virginia, transportation division, and has since refused to re-employ the said Everard M. Mann because of his membership in and affiliation with the Transport Workers Union of America, a labor organization of its employees at its Norfolk, Virginia, transportation division, and because he engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

11. By its termination of employment of the employees named in paragraphs 8, 9, and 10 above, for the reasons above set forth, and by its refusal to reinstate the above named employees, the respondent has discriminated, and is now discriminating, in respect to the hire and tenure of employment of the above named individuals, and did thereby discourage, and is thereby discouraging, membership in the International Brotherhood of Electrical Workers and the Transport Workers Union of America, and did thereby engage in, and is thereby engaging in, an unfair labor practice within the meaning of Section 8, subdivision 3 of the said Act.

12. The respondent, by its officers, agents, and employees, on or about May 1, 1937, caused to be organized a labor organization of its employees known as the "Independent Organization of Employees of the Virginia Electric & Power Company," and

has since that time dominated and interfered with the administration of the said organization, and has furnished financial and other support to it in various ways, among others:

(a) by permitting and directing its supervisory officials to encourage employees to form the said organization;

(b) by permitting and directing the use of company property for the conduct of meetings of the said organization;

(c) by permitting and directing the use of stenographers, stenographic supplies, company bulletin boards, and other services by the said organization;

(d) by permitting and directing the solicitation of members of the said organization on property of the respondent during working hours, and refusing the same to other labor organizations;

(e) by requiring, as a condition of employment, membership in the said organization;

(f) by deducting amounts from the salaries and wages of its employees to support and maintain the said organization;

(g) by permitting and directing its supervisory officials to become and to remain active in the conduct of the affairs of the said organization; and

(h) by consulting with the officials of the said organization and otherwise directing its affairs.

13. By causing the said Independent Organization of
13 Employees of the Virginia Electric & Power Company to be organized, and by its interference with and domination of the administration of the affairs of the said organization, and by its financial and other support thereto, all as above set out in paragraph 12, the respondent has engaged in and is now engaging in, an unfair labor practice within the meaning of Section 8, subdivision 2 of the said Act.

14. On or about August 5, 1937, the respondent, by its officers, agents, and employees, entered into an agreement with the said Independent Organization of Employees of the Virginia Electric & Power Company, providing, inter alia, that membership in the said organization should be a condition of employment. Said agreement was entered into with a labor organization established, maintained and assisted by unfair labor practices as above set forth, and with an organization which was not the representative of the respondent's employees, as provided in Section 9 (a) of the said Act, in the appropriate collective bargaining unit covered by such agreement when made, and is, therefore, void and of no effect.

15. The respondent, by its officers, agents, and employees, while engaged as above described, did, at various times since January

1, 1937, interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed by Section 7 of the said Act in various ways, among others:

(a) by the making of speeches hostile to the membership of its employees in, and their affiliation with, the Transport Workers Union of America, the International Brotherhood of Electrical Workers, and the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, an unincorporated association;

(b) by the making of remarks calculated to discourage the membership of its employees in, and their affiliation with,
14 the Transport Workers Union of America, the International Brotherhood of Electrical Workers, and the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, an unincorporated association;

(c) by threats of discharge because of membership in, or activity on behalf of the Transport Workers Union of America, the International Brotherhood of Electrical Workers, and the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, an unincorporated association;

(d) by maintaining surveillance over the efforts of its employees to organize a labor organization; and

(e) by employing the services of detective agencies to render reports on the organizational activities of its employees.

16. By all of the acts alleged in paragraphs 8, 9, 10, 11, 12, 13, 14, and 15 above, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act, and has thereby engaged in, and is thereby engaging in, unfair labor practices within the meaning of Section 8, subdivision 1 of the said Act.

17. The activities of the respondent set forth above, occurring in connection with the operations of the respondent described above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

18. The aforesaid acts of the respondent, enumerated in paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 above, constitute unfair labor practices within the meaning of Section 8, subdivisions 1, 2, and 3, and Section 2, subdivisions 6 and 7 of the said Act.

Wherefore, the National Labor Relations Board, on this 7th day of May 1938, issues its Complaint against the Virginia Electric & Power Company respondent herein.

15 *Notice of hearing*

Please take notice that on the 19th day of May 1938, at 9:30 o'clock in the forenoon, Eastern Standard Time, in the Council Chamber, Old Municipal Building, Monticello Avenue, Norfolk, Virginia, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with said Rules and Regulations, Series 1, as amended, Article IV, Section 3, and Article II, Section 22, on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Fifth Region, with offices in Room 200, 32 South Street, Baltimore, Maryland, acting in this matter as the agent of the National Labor Relations Board, an answer to the attached Complaint on or before the 14th day of May 1938.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1, as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In witness whereof, the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Fifth Region on the 7th day of May 1938.

BENNET F. SCHAUFFLER,
Regional Director.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

Case No. V-C-139—Case No. V-C-349—Case No. V-C-373

[Title omitted.]

Answer

Filed May 14, 1938

Now comes Virginia Electric and Power Company and for answer to the Complaint herein of the National Labor Relations Board signed on May 7, 1938, or to so much thereof as it is advised that it is necessary and proper that it should answer, saving and reserving to itself any and all manner of

exceptions to the said Complaint, states as follows in respect thereof:

(1) Virginia Electric and Power Company admits the allegations of paragraph 1 of said Complaint.

(2) Virginia Electric and Power Company admits the allegations of paragraph 2 of the Complaint.

17 (3) Virginia Electric and Power Company denies each and every allegation of paragraph 3 of the Complaint except that Virginia Electric and Power Company admits that in the course of its operations, and from time to time as the exigencies thereof make necessary or desirable, it transmits substantial quantities of electric energy from its generating stations in the Commonwealth of Virginia through its transmission lines into the State of North Carolina and transmits substantial quantities of electric energy from the transmission systems of companies some of whose facilities are located in States of the United States other than the Commonwealth of Virginia to its distribution system in the Commonwealth of Virginia.

(4) Virginia Electric and Power Company denies each and every allegation of paragraph 4 of the Complaint, except as follows: (a) Virginia Electric and Power Company admits that its transmission and distribution system is the only source of electric power presently available for certain substantial industries in eastern Virginia and Eastern North Carolina and that substantial amounts of electric energy supplied by it are currently used by railroads, aids to navigation, radio communication, telegraph communications, and coaling stations; but (b) Virginia Electric and Power Company has no knowledge or information sufficient to form a belief as to whether its distribution system is the sole source of electric power for the consumers last aforesaid and calls for strict proof thereof.

(5) Virginia Electric and Power Company admits the allegations of paragraph 5 of the Complaint except as follows: (a) Virginia Electric and Power Company denies that it operates any street railway service in the City of Petersburg, Va., or the City of Portsmouth, Va.; and (b) Virginia Electric and Power Company denies that any of said street railway or bus service is operated for the transportation of United States mails.

18 In further answer to paragraph 5 of the Complaint, Virginia Electric and Power Company alleges that: (a) each and every part of said street railway and bus service is operated entirely within the Commonwealth of Virginia as a separate and isolated local service and solely for the transportation of local passengers on intrastate journeys within said Commonwealth, without any arrangement, express or implied, with any other carrier for the performance of continuous or connected service

in interstate or intrastate transportation or for the issuance or sale of joint tickets or fares for such continuous or connected transportation; and (b) no United States mails are carried in any part of any of said street railway or bus services except in unimportant amounts for negligible distances over two minor routes in and near the City of Norfolk, Virginia, and all of such mail service has been discontinued by action of the postal authorities of the United States effective May 15, 1938.

(6) Virginia Electric and Power Company admits that its operations described in paragraphs (1), (2), (3), (4), and (5) hereinabove are conducted under common direction, management and control, but denies that they are conducted as an integrated enterprise, and on the contrary alleges that its electric business, its gas business, and its street railway and bus service are operated, managed, reported, and conducted as separate and independent enterprises.

(7) Virginia Electric and Power Company admits the allegations of paragraph 7 of the Complaint except that it has no knowledge or information sufficient to form a belief as to whether Transport Workers Union of America and or Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America and or International Brotherhood of Electrical Workers are labor organizations as defined in Section 2, Subdivision 5 of the National Labor Relations Act, and calls for strict proof thereof.

19 (8) Virginia Electric and Power Company denies each and every allegation of paragraph 8 of the Complaint, except that Virginia Electric and Power Company admits that on or about November 4, 1937, the employment of A. F. Staunton, theretofore employed by it as a lineman in its Norfolk, Virginia, distribution department, was terminated by mutual consent for the sole reason that by Part I of Section B of an agreement lawfully entered into under date of August 5, 1937, between Virginia Electric and Power Company and the Independent Organization of Employees of Virginia Electric and Power Company, the Company was obligated, during the term of such agreement, not to retain in its employment for a period of more than ninety days after the date thereof any employee eligible for membership in said Employee Organization unless such employee should be a member of said Employee Organization.

(9) Virginia Electric and Power Company denies each and every allegation of paragraph 9 of the Complaint, except that it admits that on or about March 31, 1938, it terminated the employment of Thomas N. Harrell, Jr., and John L. Judge, both of whom had theretofore been employed as linemen in its Nor-

folk, Virginia, distribution department, in each case for the sole reason that the work for which such persons had been employed was completed and their services were no longer, and have not since been, and are not now, needed.

(10) Virginia Electric and Power Company denies each and every allegation of paragraph 10 of the Complaint, except that it admits that on or about June 1, 1937, it terminated the employment of Everard M. Mann, theretofore employed in its bus service in the City of Norfolk, for the sole reasons that his services were not satisfactory and he was guilty of insubordination incompatible with the maintenance of essential discipline and order.

20 (11) Virginia Electric and Power Company denies each and every allegation of paragraph 11 of the Complaint.

(12) Virginia Electric and Power Company denies each and every allegation of paragraph 12 of the Complaint, except that it admits that: (a) It has made available on Company property bulletin boards for the use of said Employee Organization; (b) it has, pursuant to the provisions of said agreement of August 5, 1937, and to the extent required thereby, refused to retain in its employment employees eligible for membership in said Employee Organization who were not members thereof; (c) pursuant to the provisions of said agreement of August 5, 1937, and to the extent required thereby, Virginia Electric and Power Company has accepted written orders (revocable at any time by notice in writing from the employee) signed by members of said Employee Organization authorizing said Company to deduct from that member's wages the amount therein specified and to pay to said Employee Organization said amount less said Company's cost of making such deduction; (d) pursuant to the provisions of said agreement of August 5, 1937, and to the extent required thereby, Virginia Electric and Power Company has, from time to time, held discussions in the ordinary course of business with the independent officers of said Employee Organization, and (e) one man was formerly engaged to advise said Company as to developments in the City of Norfolk, including labor organizational activities, but this arrangement was terminated in May, 1937.

(13) Virginia Electric and Power Company denies each and every allegation of paragraph 13.

(14) Virginia Electric and Power Company admits that by its officers it entered into an agreement as alleged in the first sentence of paragraph 14 of the Complaint, but denies each and every other allegation of paragraph 14 of the Complaint.

(15) Virginia Electric and Power Company denies each
21 and every allegation of paragraph 15 of the Complaint.

(16) Virginia Electric and Power Company denies each and every allegation of paragraph 16 of the Complaint.

(17) Virginia Electric and Power Company denies each and every allegation of paragraph 17 of the Complaint.

(18) Virginia Electric and Power Company denies each and every allegation of paragraph 18 of the Complaint.

Virginia Electric and Power Company denies each and every allegation of the Complaint not hereinabove specifically admitted.

For a further first separate affirmative defense, Virginia Electric and Power Company alleges that neither the services of any of the individuals named in said Complaint while they were in the employment of Virginia Electric and Power Company, nor the termination of such services, nor the failure to re-employ the same, nor the action at any time in regard to any of said individuals by Virginia Electric and Power Company, nor the relation at any time between any of said individuals and Virginia Electric and Power Company, nor the matters and things alleged in said Complaint as a cause of action, were or are in interstate commerce or affected or affect interstate commerce or tended or tend to affect interstate commerce, or were or are within the regulatory authority of the Federal government or the Congress, but were and are solely intrastate in character and beyond the regulatory power of the Federal government or the Congress.

For a further second separate and affirmative defense, Virginia Electric and Power Company alleges that neither the execution of said agreement of August 5, 1937, with said Employee Organization nor any of the acts theretofore or thereafter done by Virginia Electric and Power Company in connection therewith were or are in interstate commerce or affected or affect interstate commerce or tended or tend to affect interstate
22 commerce or were or are within the regulatory authority of the Federal government or the Congress, but were and are solely intrastate in character and beyond the regulatory power of the Federal government or the Congress.

For a further third separate and affirmative defense, Virginia Electric and Power Company alleges that each and all of its operations heretofore conducted or now conducted or expected to be conducted in the performance of its street railway and bus service are exclusively matters of intrastate and local concern and are not in interstate commerce and do not affect interstate commerce and can not tend to affect interstate commerce and are not within the regulatory authority of the Federal government or the Congress, but are beyond the regulatory power of the Federal government or the Congress.

For a further fourth separate and affirmative defense, Virginia Electric and Power Company alleges that each and all of its

operations heretofore conducted or now conducted or expected to be conducted in the performance of its gas service are exclusiveiy matters of intrastate and local concern and are not in interstate commerce and do not affect interstate commerce and can not tend to affect interstate commerce and are not within the regulatory authority of the Federal government or the Congress, but are beyond the regulatory power of the Federal government or the Congress.

For a fifth separate and affirmative defense, Virginia Electric and Power Company alleges that each and all of its operations heretofore conducted or now conducted or expected to be conducted in the performance of its electric service in Virginia are exclusively matters of intrastate and local concern and are not in interstate commerce and do not affect interstate commerce and can not tend to affect interstate commerce and are not within the regulatory authority of the Federal government or the Congress, but are beyond the regulatory power of the Federal government or the Congress.

23 For a further sixth separate and affirmative defense, Virginia Electric and Power Company alleges that the alleged unfair labor practices do not come within the commerce or other powers of the Congress of the United States, and the National Labor Relations Board has no jurisdiction over any of the matters and things alleged in the Complaint.

Wherefore, Virginia Electric and Power Company prays that the Complaint herein and each and all charges therein mentioned and all proceedings heretofore had or that may hereafter be had thereon, be finally dismissed.

VIRGINIA ELECTRIC AND POWER COMPANY.
By T. NORMAN JONES, JR.,
Vice President.
Post Office Address: Richmond, Va.

HUNTON WILLIAMS ANDERSON, GAY & MOORE.
Address: Electric Bldg., Richmond, Va.

VENABLE, MILLER, PILCHER AND PARSONS,
Address: Western Union Bldg., Norfolk, Va.
Counsel for Virginia Electric and Power Company.

T. JUSTIN MOORE.

GEORGE D. GIBSON.
Address: Electric Bldg., Richmond, Va.

ROMAN MILLER.
Address: Western Union Bldg., Norfolk, Va.
Of Counsel.

24 [*Duly sworn to by T. Norman Jones, Jr.; jurat omitted in printing.*]

25 BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

Case No. V-C-139—Case No. V-C-349—Case No. V-C-373

[Title omitted.]

Motion for intervention

Filed May 12, 1938

The Independent Organization of Employees of the Virginia Electric & Power Company, a labor organization and voluntary unincorporated association, moves the National Labor Relations Board and its Regional Director for permission to intervene in the above-styled matters, which are set to be heard on May 19, 1938, in Norfolk, Virginia, and sets forth the following grounds upon which said organization claims to be interested in said matters:

1. By agreement, dated August 5, 1937, the Independent
26 Organization of Employees of the Virginia Electric & Power Company was recognized by the Virginia Electric & Power Company, as the duly designated and selected representative of all the employees of the Virginia Electric & Power Company who hold positions below the grade of foreman or below a similar grade (confidential secretaries and part-time employees excepted) for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment. The agreement entered into between the Independent Organization of Employees of the Virginia Electric & Power Company and the Virginia Electric & Power Company is still in full force and effect.

2. The complaint, filed by the Regional Director of the National Labor Relations Board against the Virginia Electric & Power Company in the above matters, sets forth in Paragraphs 12, 13, and 14 thereof, that the Independent Organization of Employees of the Virginia Electric & Power Company was caused to be organized by the Virginia Electric & Power Company on or about May 1, 1937, and that the said Virginia Electric & Power Company has since that time dominated and interfered with the administration of the organization, and has furnished financial and other support to it in various ways, set forth specifically in said complaint. These allegations the Independent Organization of Employees of the Virginia Electric &

Power Company denies in their entirety, separately and as a whole, and desires to present evidence before the Trial Examiner at the hearing of these matters relative to this issue.

3. Pending the hearing in these matters, the Independent Organization of Employees of the Virginia Electric & Power Company desires to have its interests protected as a bargaining agency, and that it may be permitted to intervene in these matters as an interested party, with the right to present testimony and to cross-examine witnesses introduced on behalf of all
27 the other parties to the proceedings.

All of which is respectfully submitted.

INDEPENDENT ORGANIZATION OF EMPLOYEES OF VIRGINIA ELECTRIC & POWER COMPANY,
By M. E. WASH,
Secretary,
401 East Franklin Street, Richmond, Va.

WM. EARLE WHITE,
PAUL E. HADLICK,
Attorneys for Independent Organization of Employees of Virginia Electric & Power Company.

[*Duly sworn to by M. E. Wash; jurat omitted in printing.*]

28 NATIONAL LABOR RELATIONS BOARD,
FIFTH REGION, 32 SOUTH STREET,
Baltimore, Maryland, May 12, 1938.

Re: Virginia Electric & Power Co., Cases No. V–C–139, V–C–349, and V–C–373.

Messrs. WHITE, TEMPLE, HAMILTON & WYCHE,
Attorneys-at-Law, Union Trust Building, Petersburg, Virginia.

GENTLEMEN: This is to acknowledge receipt of the original and four copies of the Motion for Intervention in behalf of the Independent Organization of Employees of the Virginia Electric & Power Company.

This is to notify you that permission for leave to intervene in this matter is hereby granted.

Sincerely yours,

BENNET F. SCHAUFFLER,
Bennet F. Schauffler,
Regional Director.

BFS: ss.

29 BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

Case No. V-C-349

In the matter of VIRGINIA ELECTRIC & POWER COMPANY, A CORPORATION, *and* AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, AN UNINCORPORATED ASSOCIATION.

Amended charge

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Virginia Electric & Power Company, a corporation, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) of said Act, in that

1 Virginia Electric & Power Company, a corporation organized and doing business under the laws of the State of Virginia, and doing business in the State of North Carolina, is engaged in commerce between the states, in that said Company furnishes electric light and power service at retail to over three hundred seventy five communities in Tidewater Virginia and northeastern North Carolina, including Richmond, Norfolk, Portsmouth, Petersburg, Williamsburg, Tappahannock, Suffolk, Hopewell, Smithfield, Fredricksburg, and Ashland, Virginia, and Weldon, Roanoke Rapids, Battleboro, Aulander, Williamston, Winton, Columbia, Plymouth, Rich Square, and Ahoskie, North Carolina, and surrounding territories, having an aggregate estimated population of about seven hundred fifty five thousand persons; and in addition to the said cities and communities served at retail, eight communities with a popalation of about twenty five thousand are served at wholesale. Said Company does the entire gas business in Norfolk, operates a co-ordinated street railway and bus service in Richmond and Norfolk, bus service
30 in Portsmouth and Petersburg and operates an interurban bus service between Richmond and Petersburg; said Company maintains and operates a generating and distributing station at Roanoke Rapids, North Carolina, Williamsburg, Virginia, and a distributing system at Virginia Beach, Virginia, and owns extensive riparian right on the Tappahannock River. Said Company generates electric energy in Virginia and transmit same across the State line into North Carolina for distribution, and likewise generates electric energy in North Carolina and transmit

same into Virginia for distribution. Said Company employs in excess of three thousand persons.

2. Amalgamated Association of Street, Electric and Motor Coach Employees of America is a labor organization and a voluntary unincorporated association affiliated with the American Federation of Labor and it brings this charge on behalf of a number of employees of said Company, including employes whose work relates to the generation and distributing of power affecting interstate commerce.

3. The Virginia Electric & Power Company, the corporation aforesaid, in order to defeat the right of its employes to organize and to form, join, and assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities, for the purpose of collective bargaining and other mutual aid and protection did establish, foster and dominate a so-called labor organization called the "Independent Organization of Employes of the Virginia Electric & Power Company."

4. At all times since its formation, the said Company has dominated and interfered with the administration of said Independent Organization of Employes of the Virginia Electric & Power Company and is still continuing and intends to continue to interfere and dominate and contribute support to said organization, all of which said activities constitute unfair labor practices. This Company union is composed of all employes including those in the power department to join said Company union.

31 5. The Virginian Electric & Power Company, the corporation aforesaid, hereinafter called respondent, by its officers, agents, and employes did on or about January 15, 1938, terminate the employment of one Joseph Bolton employed by it; and did on or about November 3, 1937, terminate the employment of one Robert E. Elliott, Jr., employed by it, and has since refused to reemploy the said Joseph Bolton and Robert E. Elliott, Jr., because of their membership in and affiliation with the Amalgamated Association of Street Electric Railway and Motor Coach Employes of America.

6. By its termination of employment of the aforesaid employes named in paragraph 5 hereof, for the reason above set forth and by its refusal to reinstate the above-named employes, the respondent has discriminated and is now discriminating in respect to hire and tenure of employment of the said individuals, and did thereby discourage, and is thereby discouraging, membership in Amalgamated Association of Street, Electric Railway, and Motor Coach Employes of America, and did thereby engage

in, and is engaging in unfair labor practices within the meaning of Section 8, subdivision 3 of the National Labor Relations Act.

The undersigned further charges that said unfair labor practices affecting commerce within the meaning of said Act.

ARTHUR E. REYMAN,
Arthur E. Reyman,
Attorney for Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America, Office & P. O. Address 68 Williams St., New York, New York.

STATE OF VIRGINIA,
City of Norfolk.

Subscribed and sworn to before me this 20th day of May 1938. My commission expires Jan. 8, 1942.

[SEAL] MAMIE F. STEELE,
Notary Public.

32 BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

Case No. V-C-139—Case No. V-C-349—Case No. V-C-373

[Title omitted.]

Motion to amend complaint

Now comes Reeves R. Hilton, attorney for the National Labor Relations Board, and moves to amend the complaint issued in the above entitled matter by adding thereto after paragraph 8 the following paragraph:

"8a. The respondent by its officers, agents, and employees, while engaged as above described, did on or about November 3, 1937, terminate the employment of Robert E. Elliott, Jr., employed by it in its transportation department at Norfolk, Va., and on or about January 15, 1938, terminate the employment of Joseph Bolton, employed by it in its transportation department at Norfolk, Va., and has since refused to reemploy the said Robert E. Elliott, Jr., and Joseph Bolton because of their membership in and affiliation with the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, and because they engaged in concerted activities
33 with other employees for the purpose of collective bargaining and other mutual aid and protection."

And by adding in paragraph 11, after the figure "8," the figure and letter "8a"; by adding in paragraph 16 after the figure "8," the figure and letter "8a," by adding in paragraph 18, after the figure "8," the figure and letter "8a."

REEVES R. HILTON,
Reeves R. Hilton,
Attorney.

MAY 20, 1938.

34 BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIFTH REGION

Case No. V-C-139—Case No. V-C-349—Case No. V-C-373

[Title omitted.]

Amended answer

Now comes Virginia Electric and Power Company and, pursuant to leave heretofore duly granted herein, for its Amended Answer to the Complaint herein of National Labor Relations Board signed on May 7, 1938, as amended (hereinafter called Amended Complaint), or to so much thereof as it is advised that it is necessary and proper that it should answer, saving and reserving to itself any and all manner of exceptions to the said Amended Complaint, states as follows in respect thereof:

35 (1)—(8) Virginia Electric and Power Company refers to paragraphs (1), (2), (3), (4), (5), (6), (7), and (8) of its original Answer verified under date of May 13, 1938, and heretofore filed herein and by such reference incorporates herein each and every word and figure of each of said paragraphs with the same force and effect as if each and every word and figure of each of said paragraphs were herein repeated and set forth at length.

(8a) Virginia Electric and Power Company denies each and every allegation of paragraph 8a of the Amended Complaint, except that (a) Virginia Electric and Power Company admits that on or about January 13, 1938, it terminated the employment of Joseph Bolton, theretofore employed in its bus service in the City of Norfolk, for the sole reason that his services were unsatisfactory because of his failure properly to account for fares; and (b) on or about November 4, 1937, Robert E. Elliott, theretofore employed in its bus service in the City of Norfolk, voluntarily caused his automatic separation from the employment of

Virginia Electric and Power Company by failing to comply with the provisions of Part I of Section B of the aforesaid agreement lawfully entered into under date of August 5, 1937, between Virginia Electric and Power Company and the Independent Organization of Employees of Virginia Electric and Power Company. If said Robert E. Elliott had not voluntarily caused his automatic separation as aforesaid he would have been discharged because of his unexplained failure to account for $75 in amount of cash and weekly passes delivered to him by Virginia Electric and Power Company on November 1, 1937.

9—(18) *et seq.* Virginia Electric and Power Company refers to paragraphs (9), (10), (11), (12), (13), (14), (15), (16), (17), and (18) and to each and every unnumbered paragraph following said paragraph numbered (18) in said original Answer, and by such reference incorporates herein each and every word and figure of each of said paragraphs with the same force and effect as if each and every word and figure of each of said paragraphs were herein repeated and set forth at length.

36

Wherefore, Virginia Electric and Power Company prays that the Amended Complaint herein and each and all charges therein mentioned and all proceedings heretofore had or that may hereafter be had thereon, be finally dismissed.

VIRGINIA ELECTRIC AND POWER COMPANY,
By J. G. HOLTZCLAW,
President,
Post Office Address: Richmond, Va.

HUNTON, WILLIAMS, ANDERSON, GAY & MOORE,
Address: Electric Bldg., Richmond, Va.

VENABLE, MILLER, PILCHER, AND PARSONS,
Address: Western Union Bldg., Norfolk, Va.
Counsel for Virginia Electric and Power Company.

T. JUSTIN MOORE,
GEORGE D. GIBSON,
Address: Electric Building, Richmond, Va.

ROMAN MILLER,
Address: Western Union Bldg., Norfolk, Va.
Of Counsel.

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

Case No. V–C–139

In the Matter of VIRGINIA ELECTRIC & POWER COMPANY *and* TRANSPORT WORKERS UNION OF AMERICA

Case No. V–C–349

In the Matter of VIRGINIA ELECTRIC & POWER COMPANY *and* AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, AN UNINCORPORATED ASSOCIATION

Case No. V–C–373

IN THE MATTER OF VIRGINIA ELECTRIC & POWER COMPANY *and* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Statement of evidence

UNITED STATES CIVIL SERVICE EXAMINATION ROOM,
POST OFFICE BUILDING,
Norfolk, Virginia, Thursday, May 19, 1938.

The above-entitled matter came on for hearing, pursuant to notice, at 9:40 o'clock a. m.

2 Before JAMES L. FORT, Trial Examiner.

Appearances

Gerhard P. Van Arkel, Reeves R. Hilton, and Samuel M. Spencer, on behalf of the National Labor Relations Board.

T. Justin Moore and George D. Gibson (Hunton, Williams, Anderson, Gay & Moore), Electric Building, Richmond, Virginia, and Rowan Miller, 425 Western Union Building, Norfolk, Virginia, on behalf of the Virginia Electric & Power Company.

E. D. Bieretz, 1200 Fifteenth Street, Northwest, Washington, D. C., and T. H. Latham, 200 28th Street, Virginia Beach, Virginia, on behalf of the International Brotherhood of Electrical Workers.

White, Temple, Hamilton & Wyche (by Earle White, Petersburg, Virginia, and Paul E. Hadlick, Washington, D. C.), on behalf of the Independent Organization of Employees.

Charlton Ogburn (by Arthur E. Reyman), 68 William Street, New York City, on behalf of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division 1177.

5 *Offer of pleadings*

Mr. VAN ARKEL. Mr. Examiner, I would like to introduce as Board's Exhibit No. 1 copies of the formal pleadings in this case, which I will ask to be marked as Board's Exhibit No. 1.

Trial Examiner FORT. Will you please state what pleadings you are introducing?

Mr. VAN ARKEL. These include the original charges filed by the Transport Workers Union, the amended charge filed by the Transport Workers Union, the original charge filed by
6 the Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America, the charge filed by the International Brotherhood of Electrical Workers, and the amended charge filed by the same organization; and the order of the Board ordering consolidation of the above cases for hearing; the complaint issued by the Board on May 7, 1938; the notice of hearing issued on the same date in this matter; the return of service on service of complaint of notice of hearing upon the various parties whom I have mentioned; the answer filed by the Virginia Electric & Power Company; motion for intervention filed by the Independent Organization of Employees of the Virginia Electric & Power Company; return of service issued by the Regional Director for the Fifth Region of complaint and notice of hearing upon the Independent Organization of Employees of the Virginia Electric & Power Company.

I will ask that these be consolidated and marked as Board's Exhibit No. 1, and that each of them be given a separate and subsidiary number.

Trial Examiner FORT. Or letter.

Mr. VAN ARKEL. Or subsidiary letters.

Mr. MOORE. May I see those for a moment? You mentioned that two or three times.

Trial Examiner FORT. And if there are other pleadings in the case which have not been included in this statement, I would like to hear from any of the other parties. As I
6-a understand it, you are putting in all of the pleadings?

Mr. VAN ARKEL. Those are all the pleadings which we have knowledge of up to this time.

Trial Examiner FORT. I will withhold the ruling on that, and will give counsel an opportunity to examine those papers during the recess.

Mr. MOORE. That is all right.

Trial Examiner FORT. And if there is no objection, they will be admitted.

Mr. WHITE. We would like to examine them.

Trial Examiner FORT. I will withhold ruling until you have had an opportunity to examine them.

Mr. VAN ARKEL. May they be marked for identification?

Trial Examiner FORT. Yes.

Mr. VAN ARKEL. We ask that they may be marked "Board's Exhibit No. 1" for identification.

(The documents referred to were thereupon marked "Board's Exhibit No. 1" for identification.)

6-b Mr. HADLICK. I refer to the I. O. E. I think that will be understood.

Trial Examiner FORT. I think we had better agree on some designation for the several parties here, so that we will not have any misunderstandings. Are there any suggestions?

Mr. VAN ARKEL. Yes; I suggest that we refer to them as the Amalgamated, the I. B. E. W., the I. O. E., and the T. W. U.

Trial Examiner FORT. If you are going to do that, I would like to have the company referred to as the V. E. P.

Mr. VAN ARKEL. That will be perfectly satisfactory, Mr. Examiner.

Mr. MOORE. Yes; we would like to get in that same classification.

Trial Examiner FORT. We will proceed on that basis, then.

Mr. REYMAN. May I interpose a question, Mr. Examiner? I listened to Board's counsel offering exhibit, and was listening for the purpose of discovering whether or not the motion for leave to intervene filed by the Independent Union had been granted or ruled upon by the board. I am still in the dark on that. What is the status of that motion?

Trial Examiner FORT. I will have to refer to the record. Has there been a motion to intervene filed?

6-c Mr. VAN ARKEL. Yes; there has been a motion to intervene filed.

Trial Examiner FORT. I see that I have a letter here from the Regional Director stating that it had been granted.

Mr. VAN ARKEL. Certainly, and I think a copy of that should go in with this exhibit.

Trial Examiner FORT. That ought to be in the record.

Mr. VAN ARKEL. You have no objection to including that letter now with the original exhibit?

Trial Examiner FORT. No; I want to go through and see if it is in there. I did not hear you refer to it, myself.

Mr. REYMAN. May I say for the record that the Amalgamated Association has had no notice and has not been served with a copy, so far as I know, of the motion to intervene, although it has come to me indirectly that such a motion had been made. I may be in error, and if my office has been served, I would like to see the form or method of service. It is my understanding that the motion was granted by the Regional Director before the hearing.

Trial Examiner FORT. Yes. I have seen the letter from the Regional Director.

Mr. VAN ARKEL. I can get you a copy of the petition to intervene.

Mr. REYMAN. My inquiry was to determine the status of the motion.

6 d Trial Examiner FORT. I understand there is no objection as to the admisison of Board's Exhibit No. 1, including these other documents as indicated?

Mr. HADLOCK. I have no objection.

Trial Examiner FORT. Board's Exhibit No. 1 will be admitted.

(The documents referred to were marked "Board's Exhibit 1 a to " and were received in evidence.)

11 JACK G. HOLTZCLAW, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. VAN ARKEL:

12 Q. State your full name for the record, please.

A. Jack G. Holtzclaw.

Q. And your address, Mr. Holtzclaw?

A. Electric Building, Richmond, Virginia.

Q. What is your present position, Mr. Holtzclaw?

A. I beg your pardon?

Q. What is your present position?

A. President, Virginia Electric & Power.

Q. And for how long a period of time have you held that position?

A. About 8½ years.

Q. Are you also a member of the board of directors?

A. I am.

16-17 Q. Well, let me put it this way, Mr. Holtzclaw: Do you as president of the V. E. P. have plenary authority to deal with labor problems arising in the company?

A. I do.

Q. Do you ordinarily consult with the board of directors before making such decision?

A. No.

Q. Those are made entirely on your own initiative?

A. Yes.

Q. In the determination of the labor policies and so forth of the Virginia Electric & Power Company you, as I understand it, are responsible to no one?

A. I am responsible to the board of directors, yes.

Q. But is that a responsibility which comes after you take an action? Do you understand that question?

A. I cannot say that I do.

Q. Well, I understood you to say that you never consulted with the board of directors of the company before you yourself made a determination affecting labor policies.

A. I misunderstood the question. I did not mean that I never consulted with the board of directors. I did not intend to say so.

Q. Then, as I understand it, would it be fair to say that on matters of urgent importance you ordinarily would consult the board of directors concerning labor matters, but on the more usual matters that arise, you act on your own initiative?

18 A. I would consult with the board of directors on anything that I thought was of sufficient importance to warrant a decision by the board of directors.

Q. And you yourself would be the one to make the determination whether or not it was of sufficient importance to submit to the board of directors.

A. Not necessarily the board of directors; I may consult my associates.

Q. As to other matters you yourself are in charge, are you?

A. What do you mean by "other matters"?

Q. I mean other matters which you do not consider of sufficient importance to submit to the board of directors.

A. Yes.

Q. Now, do you have any particular official of the company who is charged with labor matters arising among the employees of the company?

A. We have no such employees.

Q. No such person. Do you yourself keep directly in touch with labor matters and labor policies of the company and make the decisions, except as you have indicated you may submit to the board?

A. That is a very small portion of my duties.

Q. I understand that. What I would like to know, Mr. Holtzclaw, is whether or not you yourself assume an active

19 direction of the labor policies of the company.

A. Fundamental policies I do. My associates are in complete charge of the various departments. I do not in the slightest degree enter into the operation of any individual department.

Q. But when a matter arose covering the policy of the company you yourself would——

A. I would be in touch with them.

Q. You would consult with the men in the various departments?

A. I would.

Q. Now, give us the names of the men who are in charge of the various departments.

A. Operating vice president is Mr. M. C. Smith.

Q. Now, will you tell us briefly what his duties are?

A. Mr. Smith's duties are connected with the supervision of the operation of the company's various departments.

Q. Well, do I understand, then, that he has general supervision of all operating activities?

A. Operating activities of the company.

Mr. T. Norman Jones, Jr., vice president in charge of transportation.

Q. Do I understand, then, that he has charge of the places that you indicated in your previous testimony, where street railway and bus transportation is carried on?

20 A. Mr. Jones has supervision of all transportation of the company where we operate.

Mr. Robert J. Throckmorton is vice president in charge of the Norfolk division of the company's operation. Mr. Throckmorton is in charge of operations in the Norfolk area. He consults with Mr. Jones in matters of transportation and with Mr. Smith in matters of all operations.

Q. Do I understand, then, that Mr. Throckmorton would have charge of the gas, electric, and transportation operations in Norfolk?

A. In the City of Norfolk and in the area around Norfolk.

Mr. Joseph T. Chase, vice president in charge of the company's operations in the State of North Carolina.

Q. Therefore, his work would be that of supervising——

A. Electric operations in North Carolina.

Q. Does he also operate subject to the direction of Mr. Smith, as Mr. Throckmorton does?

A. Exactly.

Q. Who is in charge of the Richmond operation?

A. The Richmond division.

Q. Do you have a man similar to Mr. Throckmorton there?

A. No; no similar position in Richmond.

Q. Well, have you now given us the operating heads of the different departments of the company?

A. I have given you the operating executives.

21 Q. Do I gather correctly that the business of the company is conducted along the lines indicated by the executive staff whom you have just described?

A. I do not understand that question.

Q. Well, as a matter of administrative organization, is the V. E. P. Company split up along the lines that you have indicated?

22 A. I thought I made it clear.

Mr. Smith is vice president in charge of all of the company's operations. Mr. Jones is in charge of the transportation operations for the entire company. Mr. Throckmorton is in charge of the operations in the Norfolk area. Mr. Chase is in charge of operations in North Carolina.

Q. Well——

A. We could give you an organization chart.

Q. So you have such a chart?

A. Not with me.

Q. Could it be produced at this hearing?

Mr. MOORE. We will be glad to get the chart. I understand you want the top section of it?

Mr. VAN ARKEL. Exactly. I am trying to find out the administrative practice within the company, into what divisions it is divided.

Mr. MOORE. I think if you ask him one or two more questions as to the mixed subhead of authority, you will get what you want. You just ask him now to give you the next step down on the organization chart.

By Mr. VAN ARKEL:

Q. Suppose we adopt that suggestion.

A. I will be glad to tell you the next step down.

Q. All right.

A. In the Richmond—in the electrical department, we will say, the general manager of the electrical department is

23 E. S. Fitz, whose duties are the supervision of electric operations of the entire property.

Q. When you say "of the entire property" you mean the entire property in Richmond?

A. No: entire property: Richmond, Norfolk, and so forth. He reports directly to M. C. Smith.

In the transportation department in the Richmond district J. M. Penick is general manager of transportation. * * * He reports directly to T. N. Jones, Jr., vice president.

The Norfolk district, Raymond C. Carroll, is manager of transportation, and he reports to Mr. Throcknorton, and, incidentally, when necessary, to Mr. Jones, the head of the transportation department.

The electric department in the Norfolk area, W. E. Brown is manager of the electric department in the Norfolk district.

Q. To whom does he report, Mr. Holtzclaw?

A. He reports to Mr. Throcknorton and to Mr. Fitz jointly; Mr. Throcknorton primarily, and Mr. Fitz on matters concerning electric operations.

In the gas department in Norfolk, Mr. R. C. Brooks is general manager of the gas department. He reports directly to Mr. R. J. Throckmorton.

24 Q. Is there any person on an equivalent plane in the North Carolina electric power business?

A. The North Carolina electrical business is very small. Mr. Chase spreads himself out over the entire region. There are a few minor electric officials in North Carolina. Operations there are quite small.

Q. Now, do you consult with the gentlemen whose names *whose names* you have just given us concerning labor policies of the company?

A. I do. In determining all policies of the company I consult with the top executives.

Q. By "top executives" you mean the men whose names you have just given us?

A. Yes.

Q. Now, Mr. Holtzclaw, on or about April 26, 1937, you caused to be posted a notice for the employees of the Virginia Electric & Power Company, did you not?

A. I did.

25 Q. I will show you, Mr. Holtzclaw, a mimeographed notice dated April 26, 1937, and ask you if that is the notice that you caused to be posted?

A. That is the notice.

Q. And that is your signature at the bottom?

A. That is a mimeographed copy of my signature.

Mr. VAN ARKEL. I ask, Mr. Examiner, that a copy of this notice be introduced as Exhibit 3 and that it be so marked.

28 Mr. VAN ARKEL. Mr. Examiner, this has been received as Board's Exhibit No. 3?

Trial Examiner FORT. Yes. It is received as Exhibit No. 3.

(The document above referred to was received in evidence and marked "Board's Exhibit No. 3.")

Trial Examiner FORT. Exhibit No. 3 will be copied into the record.

Board's Exhibit No. 3

VIRGINIA ELECTRIC AND POWER COMPANY,
Richmond, Virginia, April 26, 1937.

TO THE EMPLOYEES OF THE COMPANY:

As a result of recent national labor organization activities and the interpretation of the Wagner Labor Act by the Supreme Court, employees of companies such as our may be approached in the near future by representatives of one or more such labor organizations to solicit their membership. Such campaigns are now being pressed in various industries and in different parts of the country and strikes and unrest have developed in many localities. For the last fifteen years this company and its employees have enjoyed a happy relationship of mutual confidence and understanding with each other, and during this period there has not been any labor organization among our employees
29 in any department, so far as the management is aware.

Under these circumstances, we feel that our employees are entitled to know certain facts and have a statement as to the Company's attitude with reference to this matter.

The company recognizes the right of every employee to join any union that he may wish to join, and such membership will not affect his position with the Company. On the other hand, we feel that it should be made equally clear to each employee that it is not at all necessary for him to join any labor organization, despite anything he may be told to the contrary. Certainly, there is no law which requires or is intended to compel you to pay dues to, or to join any organization.

This Company has always dealt with its employees in full recognition of the right of every individual employee, or group of employees, to deal directly with the Company with respect to matters affecting their interests. If any of you, individually or as a group, at any time, have any matter which you wish to discuss with us, any officer or department head will be glad, as they always have been, to meet with you and discuss them frankly and fully. It is our earnest desire to straighten out in a friendly manner, as we have done in the past, whatever questions you may have in mind. It is reasonable to believe that our interests are mutual and can best be promoted through confidence and cooperation.

J. G. HOLTZCLAW,
President.

30 By Mr. VAN ARKEL:

Q. Mr. Holtzclaw, at any time in the previous history of the company had any notice similar to Board's Exhibit No. 3 or covering the same matters been posted?

A. Not in about eight and a half years.

Q. Have any similar notices been posted subsequently?

A. No; I think not. No notice was posted. They were read.

Q. This copy which has been introduced as Board's Exhibit No. 3 is the only notice covering labor policies and the rights of employees to organize which has been posted?

A. There was another one that mentioned the same point as is mentioned in there, that is, about June 24th.

Q. Of 1937?

A. It is my recollection there was another bulletin posted that touched some of the points mentioned in that bulletin.

Q. Do you have available a copy of that notice?

A. I think it is available. It is the bulletin of June 24th which contained a paragraph similar to the paragraph in here.

By Mr. Moore:

Q. Do you remember about the date?

A. The discussion of the Times-Dispatch article of June 24th. It closed with a similar paragraph.

Q. This notice was posted in all the departments of the Company, was it? I am referring to Board's Exhibit No. 3. Or copies of it were posted, were they?

A. Do you refer to the bulletin of April 26th?

Q. Yes.

31 A. It was generally posted throughout the plant.

Q. In the various operating divisions which you described for us?

A. Yes.

Q. Some time later you had occasion to make a talk to some representatives of the employees, didn't you?

A. I did.

Q. Do you recall what date you made that talk?

A. That was May 24th.

Q. May 24, 1937?

A. Yes.

Q. I have here three mimeographed sheets which I will show you, and I will ask you if that represents what you said at that meeting on May 24th?

A. That is the paper I read.

Q. That is the paper you read at that time?

A. Yes.

Q. Did you cause it to be mimeographed?

A. I did.

Mr. Van Arkel. Mr. Examiner, I will ask that these notes of the meeting of May 24th, 1937, be admitted in evidence as Board's Exhibit No. 4.

32 Then, pending the ruling of the Trial Examiner may this document be marked as "Board's Exhibit No. 4" for identification?

Trial Examiner FORT. It may be so marked.

MR. MOORE. So far as we are concerned, we have no objection to its admission.

Mr. REYMAN. I have no objection.

Trial Examiner FORT. It will be admitted as Board's Exhibit No. 4.

36 By Mr. VAN ARKEL:

Q. You have just identified Board's Exhibit No. 4 as a copy of the paper you read at a meeting of certain representatives of employees of the Virginia Electric and Power Company on May 24, 1937. Where was that meeting held?

A. In the Assembly Room, Electric Building, in Richmond.

Q. That is on property owned by the Virginia Electric and Power Company?

A. That is right.

Q. That auditorium is used for meetings of employees of the company; is it?

A. To some extent; yes. It is primarily a demonstra-
37 tion room. That was turned on that occasion into an Assembly room.

Q. About how many does that seat?

A. I would say around a hundred.

Q. Prior to that time had you made arrangements to have employees of the company present at that meeting?

A. I did.

Q. Will you tell us how you made those arrangements?

A. I called a meeting of the principal operating heads of the company, the foremen, or, rather, the superintendents, in Richmond.

Q. Can you tell us when that meeting was held?

A. The meeting was held May 20th in the John Marshall Hotel in Richmond, at noon, or at one o'clock.

Q. Was that on Saturday or was it a working day?

A. I don't understand the question.

Q. Was that on Saturday, or do you recall?

A. It was May 20th. I think it was Thursday. It was at one o'clock. We had a meeting of between 35 and 40 of the superintendents and those responsible for the operations, at which time I explained to them the fact that several petitions had been received from employees of the company which indicated that they had a desire to discuss some of their affairs that were of interest to them with the company's officials. Three or four instances had come to my attention.

38 I told them the receipt of these bulletins indicated a desire on the part of the employees of the company to bargain with the company, but that to attempt to answer the four or five specific requests that had been made of the company would simply be the introduction of chaos into the operations, and that I desired to talk to the company's employees and tell them what their rights were and what their privileges were as granted by the Wagner Labor Relations Act, which had been validated by the Supreme Court previously, and to go back to your particular groups and ask them to select their own representatives to attend the meetings to be held on a date to be specified later, at which time I would like to talk to them about the conditions.

Q. How did you get these superintendents and other officials of the company at that meeting? Did you call them by telephone or did you write them?

A. I don't recall.

Q. In any case, they were there in pursuance of instruc-
39 tions issued by you, were they?

A. Yes.

Q. Those men represented all of the different departments of the company which you described?

A. Yes, sir.

Q. Were you later informed that the supervisory officials who were present at that meeting had gone back and had conducted such an election for representatives as you had requested at that meeting?

A. I was informed that they had talked to employees in various groups. I was never informed as to whether anybody would be present to listen to me talk.

Q. You were informed, in any case, that the supervisory officials had gone back and were told they had conducted elections among the employees for the purpose of electing representatives to come to hear you speak?

A. Will you please repeat the question?

Q. You were informed, in any case, that the supervisory officials had gone back and were told they had conducted elections among the employees for the purpose of electing representatives to come to hear you speak?

A. I was told that the supervisory force had talked to the employees in various groups. I don't know anything about whether they had elected people to attend.

40 Q. I wasn't asking you whether the supervisory officials had elected people to attend but I was asking you whether you were informed that the supervisory officials had arranged or suggested the holding of elections among the employees to elect representatives to come and hear you speak.

A. I was.

Q. And those representatives did come to hear you speak, did they not?

A. Yes.

Q. Perhaps my question was a little ambiguous. I asked you if you were informed that the supervisory officials had held elections or had suggested to the employees the holding of elections. Which was the fact as you understood it?

A. The supervisory force suggested to or advised the employees that Mr. Holtzclaw would like to meet them at the Assembly Room, Electric Building, at a date to be announced later, and suggested an election among their own groups for representatives to be present to hear him talk if they saw fit to do so.

Q. Had you given such instructions to the supervisory officials that they do that?

A. I requested them at the meeting held at the John Marshall Hotel on May 20th to do that.

41 Q. Will you tell us as nearly as you recall what instructions you gave the supervisory officials at that meeting at the John Marshall Hotel?

A. I think I have already answered that, that my only instruction was that I wanted to talk to a group that would represent the cross-section of the company's employees.

Q. It was not your intention at that time to talk to all the employees; was it?

A. It certainly was not.

Q. The procedure which you envisaged at that time was that you would talk to a selected group of representatives of the employees, was it not?

A. A selected group from each branch of the company's operations.

Q. But that those men would be representatives of all the employees? Was that your desire at that time?

A. The representation would be from each group by groups. I mean the power plant, the railway shop, the distribution department, a group representing each department, and that group to be selected by all in that department.

Q. So that at the time you talked with the supervisory officials I assume you did leave with them the impression that the employees were to select representatives rather than to come in a body to hear you speak?

A. The employees were to select representatives.

Q. And did you instruct the supervisory officials?

42 A. I asked the supervisory officials to notify the groups of employees that that is what I wanted, to notify the

group of employees that they could come to the meeting if they saw fit or they could stay away if they saw fit.

Q. In any event, they were to notify the employees that if the employees wished to do so they could elect representatives to come to hear you make this talk?

A. If the employees wanted to hear what I had to say they could come, and if they didn't want to they didn't need to.

Q. Apparently they did wish to hear what you had to say, because they came. They did come to hear you.

A. Some did. I don't know whether all of them did or not.

Q. About how many heard you speak on the evening of May 24th?

A. My recollection is there were about 70.

Q. At the time you were discussing with the supervisory officials what you wanted in the way of representatives to hear you speak, did you give them any instructions that they should not be present at the time that the employees were actually electing representatives?

A. Yes.

Q. You did give them such instructions?

A. Yes.

Q. Did you tell them if they wanted to elect representatives they were to have nothing to do with it and no supervisor was to have anything to do with it?

43 A. Yes.

Q. So that at that time you definitely gave them instructions that at the time the elections were held the supervisory officials themselves were not to be present?

A. Yes.

Q. They were to inform the employees of the talk you were to make and notify the employees so that if they wished to they could just send representatives to hear you make that talk? Is that correct?

A. That is correct.

49 Q. You testified, Mr. Holtzclaw, that prior to the time you had the meeting with the supervisory officials at the John Marshall Hotel, you had received a number of petitions from employees. Can you tell us about how many such petitions you had received?

A. I do not recall how many written petitions were received. Reports had come to me of numerous verbal requests.

Q. Reports of what character?

A. And one or two written petitions. I do recall that.

Q. Do you have any such petitions in your possession or under your control at the present time?

50 A. I think we have one or more.

Q. Will you make an examination of your files and produce such petitions as you have?

A. We have in our files there some papers. I do not recall how many or just exactly when they were presented.

My recollection is that there were two written petitions and statements that came to me as reports from department heads that the men had requested consideration.

Q. Were any of those reports from organizations?

A. What do you mean, "organizations"?

Q. Well, I assume that from time to time employees make requests of the foremen for increases in pay or change in hours or matters covering working conditions, do they not?

A. Oh, we frequently get petitions of one character or
51 another.

Q. Had you received such petitions, prior, say, to the beginning of 1937?

A. I do not recall.

Q. Do you recall, in your experience as the president of the company, receiving such petitions, outside of the two that you have just referred to?

A. By "petitions," you mean just a group of names signed to a request for a change in working conditions, or something of that sort?

Q. Yes.

A. I do not recall.

Q. You have no recollection of receiving such?

A. No recollection; no.

Q. Well, by "organization," I meant requests coming in a little more formal way, that is, coming from an organization of some kind. Had you received a request like that before May of 1937 or before May 24, 1937?

A. We had one request or petition signed by about 190 members of the Transportation Department in Norfolk.

Q. Was that petition signed——

A. They signed as individuals on this petition.

Q. Your present summary is that that petition was not submitted in the name of any organization; is that correct?

A. It was not.

52 Q. It was merely submit at the request of some group of individual employees?

A. I think the petition will be handed in in evidence, and you can determine from that.

Q. Mr. Holtzclaw, you have identified Board's exhibit No. 4 as the paper that you had at the meeting of May 24th. That is correct, is it not?

A. I identified the paper that I read at the meeting of May 24th.

Q. Had you consulted anyone in the preparation of that paper?

A. My associates.

Q. Had you consulted with Mr. Moore?

A. Yes, sir.

Q. And by "associates" you mean the same men you had consulted about the holding of the meeting?

A. That is right; the executives with whom I confer constantly concerning all matters relating to the company.

Q. Was it as a result of your joint effort that that statement was drawn up in the form in which it finally appeared?

53 A. I think this statement was a result of deliberations that the group of us had.

Q. Did you have a meeting at which you went over the contents of that paper?

A. I do not recall.

Q. Well, do you recall whether or not it was submitted to these men as a group or submitted to them as individuals, one at a time?

A. I do not recall.

Q. Do you recall whether or not the statement was prepared before the meeting at the John Marshall Hotel?

A. If that paper was prepared before the meeting at the John Marshall Hotel?

Q. Yes.

A. I do not recall, but I think it was not.

Q. Your memory is, then, that was prepared some time between the meeting at the John Marshall Hotel and the meeting at the auditorium; is that correct?

A. Correct, for the sole purpose of presenting to the men at the meeting of May 24th.

Q. Had you had that statement mimeographed before the meeting of the 24th, or was it mimeographed afterwards?

A. My recollection is that that statement was read from a typewritten sheet, and was mimeographed afterwards, for the purpose of being placed in the hands of the superintend-

54 ents to read what I had said to the employees of the company.

Q. Now, you had this statement typed out, then. Did you read the statement verbatim, as it now appears in evidence as Board's exhibit No. 4?

A. I read the statement verbatim, and read sections of it twice.

Q. You read sections of it twice?

A. Yes.

Q. Did you elaborate on the written memorandum in any way?

A. Very briefly, as I recall. No notes were made of what I said.

Q. I see. However, there may have been certain remarks made at that time which do not now appear on Board's exhibit No. 4: is that correct?

A. That is true.

Q. Do you recall in what respect you amplified or elaborated on the statements which are now contained in Board's exhibit No. 4?

A. In a most general way. I recall, after reading the statement reading parts of it twice, I explained to the employees that, in plain everyday English, that statement said that they had a right to do whatever they saw fit to do, and their actions must be determined by their own judgment; that neither the
55 company nor any of its officials or executives were to interfere with them in the slightest degree in arriving at a conclusion as to whether they wished collective bargaining with the company, and if so, how they wished to carry out the collective bargaining.

Q. Now, that statement of yours came after you had finished reading the statement which now appears as Board's exhibit No. 4?

A. That is correct.

Q. Did you change the reading of that statement or interpolate any remarks of your own while you were reading the statement itself?

A. I do not recall that I interpolated a word while I was reading it except to say, "Now, to make this perfectly clear, I wish to read this section again."

Q. Do you recall which sections you read twice?

A. My recollection is it was the last two paragraphs, the paragraph which quotes section 7 of the National Labor Relations Act, and the last paragraph. I read those twice, according to my recollection.

Q. Would it help you to have a copy of the exhibit before you?

Mr. MOORE. Suppose you do that?

The WITNESS. Give me the copy, and I can tell you.

(Mr. Van Arkel handed a paper to the witness.)

Mr. MOORE. All right, sir. Now, make any further ex-
56 planation you care to make.

A. I repeated the section which quotes verbatim from the act, section 7, and I repeated, according to my best recollection, the last two paragraphs.

By Mr. VAN ARKEL:

Q. Did you open that meeting by reading that statement, Mr. Holtzclaw? Was that the first thing that happened after each employee had gotten up and identified himself?

A. As I recall it, I told the employees that they had been requested to appear and hear a statement from the president of the company; and in order that there could be no possible misunderstanding of the president's statement, it had been reduced to writing, and it would be read to them verbatim, and would constitute the president's speech.

Q. Did anyone else speak at that meeting?

A. No one else.

Q. Or make any remarks?

A. No one else spoke, but two questions were asked, as I recall it.

Q. Mr. Moore was present, as you testified?

A. Mr. Moore was present.

Q. Were the two of you seated on a platform of some kind?

A. No; we were seated on the front row of chairs, very much like these chairs, and when everybody came into the room and we thought we had the full attendance, I stepped up
57 the platform, on which there was a small table, about like this [indicating].

Q. Now, you have testified that, according to your recollection, there were two questions asked at this meeting. Did you identify the persons who asked those questions?

A. I did not know either one of them.

Q. Can you tell us what the questions were and your response to each?

A. I can, to the best of my recollection. One lady asked me if it was necessary for an employee to join any organization, and I said, "According to the Act, it is not necessary for you to join any organization; on the other hand, you can join any organization that you see fit." She repeated, "Was it necessary for them to join the union," and I said, "No; the act gives you a freedom of choice."

The other question was from an old negro down at the power house, that I remember seeing before. He said he wanted to ask one question, that he wanted to know why it was that he who had worked in the power plant for many years, and could take a boiler down and put it together and make it work, was still classed as a laborer. I declared that I believed that was a thoroughly logical question.

To the best of my knowledge, those were the only two questions asked. There were some questions between individuals who were present, but not directed at the chairman.

58 Q. Did any of the representatives who were present make any formal talk of any kind?

A. I do not recall any formal talk.

Q. Were you present throughout the meeting until the time it adjourned?

A. I left the meeting and left the group there. I do not know how long they stayed.

Q. Do you have any knowledge of what happened after you left the meeting?

A. I have no knowledge of what happened after I left the meeting. As I recall it now, I told them I was going to leave; they could remain there and do whatever they saw fit.

Q. Now, prior to the time that this meeting was held, had you discussed either the holding of the meeting or the matters which were to be brought up at that meeting with anyone, except the executive associations, to whom you have referred, and Mr. Moore?

A. I do not recall.

Q. Do you have any memory of speaking to anyone outside of that group?

A. I do not recall.

Q. Do you have any recollection as to whether or not you had discussions of the holding of the meeting, or anything that would happen at the meeting, with any of the representatives who were actually present at the meeting?

59 A. I had not.

Q. Had you discussed it with any employees, other than your executive assistants?

A. I have never discussed the subject with any employee of the company.

Q. I suppose you mean except for the group of executives with whom you said you discussed it?

A. I will say below the rank of foreman or supervisors.

67 The WITNESS. The question was asked me, as I recall it: When was the first information I had of any organization of the company's employees? I said that on July 19th, that was the first definite information I had secured.

Q. Were you at any time informed, Mr. Holtzclaw, that the representatives who were present at the meeting which you addressed on May 24th had proceeded to set up an organization among the employees?

A. Will you read that question.

(The Reporter thereupon read the pending question as above recorded.)

A. I have no idea in the world as to what the employees present at the meeting on May 24th did.

68 Q. I take it, then, that the answer to my question is that you did not learn that the employees present at the meeting on May 24th had set about forming an organization?

A. After I addressed the meeting on May 24th, I left the room, telling them that they could remain, if they saw fit. I have not any idea about any activity of any local employees since that date.

Q. How did the fact that there was an organization among the employees come to your attention on July 19th?

A. By the presentation to me of a letter, and along with it, a proposed agreement, the letter being signed by the general chairman of the Independent Organization of Employees of the Virginia Electric & Power Company.

Q. Do you recall his name?

A. His name is Eugene Underwood.

Q. Do you have available the original of that letter?

A. The original of that letter is available in the papers.

69 Q. We have a copy of it. I show you, Mr. Holtzclaw, a photostatic copy, of the letter dated July 19th, 1937, and ask you if that is, as you recall, a copy of the letter that you received from Mr. Underwood on that date?

A. That looks to be about the letter. I would not testify that it is exactly the letter; the original. The sense and purpose, it seems to be the letter.

70 (The document referred to was thereupon marked "Board's Exhibit No. 5" for identification.)

Q. Now, Mr. Holtzclaw, I show you also a photostatic copy of a letter dated July 21, 1937, addressed to Eugene Underwood, chairman of the I. O. E., and ask you if that, as you now call it, was your reply to the letter received on July 19th?

A. That is. I recognize that.

71 (The document referred to was marked "Board's Exhibit No. 6" and was received in evidence.)

Q. Now, did you have any further communication with the Independent Organization of Employees after the letter of July 19th was received?

A. As I recall it, we received a letter advising that the date of July 30th, I believe, would be satisfactory.

Q. I see. Would that letter be dated July 26th, 1937?

A. I do not recall the date.

72 Q. I will ask you to examine the paper which I have just offered you; and I will ask you if you can tell us whether or not that is a copy of the next communication which you had from the I. O. E.?

A. I believe it is. The original is in the files of the company and I think can be made available.

Trial Examiner FORT. Board Exhibits Nos. 5, 6, and 7, in the absence of objection, will be admitted.

(The documents above referred to were received in evidence and marked "Board's Exhibits No. 5, 6, and 7.")

Mr. VAN ARKEL. The paper I have just offered is a photostatic copy of a communication from the Chairman of the I. O. E. to Mr. Holtzclaw.

By Mr. VAN ARKEL:

Q. Now, Mr. Holtzclaw, the communications which are in evidence as Board's Exhibits No. 6 and 7 indicate a meeting was to be held with representatives of the I. O. E. on or about July 30th. Is that correct?

A. That is correct. I think July 30th was the date.

73 Q. And such a meeting was, in fact, held?

A. It was.

Q. Were you present all the time?

A. At the outset I was present.

Q. Were there any others present representing the Virginia Electric and Power Company?

A. They were.

Q. Who were they?

A. Mr. M. C. Smith, Mr. T. Norman Jones, Jr., R. J. Throckmorton, Mr. E. S. Fitz, and Mr. P. R. Williams.

Q. What is his position with the company?

A. Comptroller. And T. Justin Moore, counsel, was there. I believe that was the group representing the company.

Q. Who is that?

A. That is my recollection of the group which represented the company.

Q. Do you recall who was representing the I. O. E. at that time?

A. I do not. Eugene T. Underwood was present; and counsel, Mr. White, was present and there were Mr. Tatem, and Mr. Fause, and others which constituted a committee of approximately ten representing the Independent Organization or the I. O. E.

74 Q. Was the agreement signed at that first meeting?

A. The agreement was signed on the 5th of August, which was about five days later.

Q. Were there any meetings held in the interim between July 30th and August 5th?

A. Meetings were held constantly, on July 30th, July 31st, August 1st all of the day and well into the night, and meetings, as I recall it, the first two nights lasted until about midnight.

Q. How many meetings did you have?

A. They were practically continuous. They did break up to sleep. I was present for about only 30 minutes of the first meeting. I took no part in the negotiations on the new contract.

Q. I believe you stated that attached to the letter, which was the first letter of July 19th, which was addressed to you by the I. O. E. there was a copy of the proposed contract.

75 Is that correct?

A. The letter of July 19th, or in the same envelope with that letter, was an agreement proposed by the Independent organization.

Q. I assume some changes were made in the original contract that was submitted by the organization, was there not?

A. Nobody would recognize what was finally signed by comparison with what was suggested.

Q. I have here a mimeograph copy of articles of agreement between the Virginia Electric and Power Company and the I. O. E dated August 5, 1937.

Q. Mr. Holtzclaw, I will ask you if this is the copy of the agreement as finally signed?

76 A. I couldn't say whether this is a copy without making a very definite and lengthy check with the original in the files. That may be a copy of it. I haven't the slightest idea whether it is or not. It bears no signature. I think we have a copy, or, rather, I think we have a copy which you may have.

77 Trial Examiner FORT. That may be done. And this paper may be marked at this time as Board's Exhibit No. 9 for identification.

(The document above referred to was marked for identification "Board's Exhibit No. 9.")

By Mr. VAN ARKEL:

Q. Mr. Holtzclaw, you yourself signed the agreement as finally entered into between the company and the I. O. E., did you not?

A. I did.

Q. That agreement provided that membership in the Independent Organization of Employees should be a condition of employment?

A. Will you repeat the question, please?

Q. I say the agreement, in brief, provided that membership in the I. O. E. should be a condition of employment at the Virginia Electric and Power Company?

A. That is correct.

Q. And it also provided, didn't it, for a check-off of dues and assessments to the I. O. E. by the Virginia Electric and Power Company?

A. Upon order of the employee involved, which order could be withdrawn at will.

89 Q. Prior to July 19th had the possibility of checking off dues to the I. O. E. entered your mind?

A. Nothing about the I. O. E. had entered my mind previous to July 19th.

Q. Mr. Holtzclaw, I will ask you if prior to the meeting which you held at which you addressed the employees on May 24th, did you have any knowledge that any labor organizations were attempting to organize the employees of the Virginia Electric and Power Company?

A. No, sir.

Q. You did not?

A. None whatever, as I recall it.

Q. You had no such information?

A. No.

90 Q. Were you informed by any official of the company or were you informed from any other source up to May 24th that efforts were being made by labor organizations to organize the employees of the Virginia Electric & Power Company?

A. I had no information of any labor organization activities in the company at all up to the time of that meeting, but I have no definite information as to that. That is hearsay.

Q. Can you give us the name of the individual?

A. You will have to refer to the newspaper clippings as to that. Nothing came to me direct at all. There is a file of newspaper clippings which might give the Board some information if they wish to have it. No information has come to me direct about it.

Q. Had you heard of any activity of the Transport Workers Union, affiliated with the C. I. O., in making efforts to organize?

A. I had not.

91 Q. I believe you stated at that time or at the time you made this speech because of the request that you had received for increases in pay and other changes in working conditions you considered it advisable that you deal with all the employees rather than dealing with small groups at a time.

A. I considered it only reasonable to deal with duly-constituted representatives who represented the employees.

Q. But you were anxious to deal with the representatives of all these employees?

A. That is correct.

Q. Rather than with isolated groups representing different departments?

A. I wanted to deal with employees who were representatives of all employees and not isolated groups scattered here and there.

Q. In this last paragraph of the speech of May 24th was an invitation to the employees to form an organization with which you could treat?

A. That all depends upon the definition of the word incorporated in the act by Senator Wagner, I presume, when he wrote it, if you will refer back and read section 7 (a).

92 Q. Section 7 (a)?

A. Yes; or the first two or three words.

Q. Of section 7 (a)?

A. I mean section 7.

Q. Would you like to have me refer to the law and read this? "Every employee shall have the right to self-organization."

A. Right there. It uses that term. We took the word out of the act and put it into the last paragraph. "Self-organization," means the organization of the American Federation of Labor or a local of the C. I. O. or a local of anything else, or an independent union or anything that the employees of this company saw fit to organize or to join. That is what that paragraph means. You can't make any other meaning to it, because the word used is the word taken directly from the act as passed by Congress.

Q. In any case, the question I asked, Mr. Holzclaw, whether this last paragraph in the speech which you made was an invitation to the employees to form an organization.

A. To form an organization for collective bargaining purposes.

93 Q. And your purpose in making the speech was to induce the employees to form an organization, was it not?

A. It was to induce the employees to form an organization; it was to tell the employees if they wished to bargain collectively the company would like to have them proceed on an orderly basis or in an orderly manner.

Q. I believe you stated because you were not willing to deal with isolated groups of employees it was at least your hope that your employees would found one organization representing all employees, was it not?

A. Form an organization which would be duly constituted to represent the employees.

Q. And by employees you mean all employees?

A. I mean the employees of the company. There is no reference anywhere to any invitation or suggestion that all employees organize into one. It was to tell the employees that they had a right to do whatsoever they saw fit.

Q. But, as I understand it, your difficulty prior to this time had been that employees were coming to you representing only themselves or representing isolated groups throughout the plant, were they not?

A. That is right.

Q. And that was your difficulty?

A. Yes, sir.

94 Q. And you found difficulty in meeting that situation because of the difficulty of adjusting wage rates for a few individuals or isolated groups? Is that correct? That is so stated in that paper. And in view of that difficulty which you had you wanted an organization among the employees which would be qualified to represent the employees as a whole, do you not?

A. I did not say I wanted an organization at all. I asked them to suggest to the employees that if they saw fit to bargain collectively with the company, which they had a right to do under the Wagner Act today, to proceed in an orderly manner to do so, and avoid chaos.

Q. Your own interest at that time was in having them form an organization which would generally represent all employees, was it?

A. I don't know what our interest was at all. We simply suggested to the employees that they organize and form some sort of organization which could provide collective bargaining in an orderly manner; that is all.

Q. You certainly did not want them to form an organization or you did not want them to form sporadic organizations throughout the property?

A. What I wanted had nothing whatever to do with it; it was what the employees wanted.

95 Q. I am asking you for the moment about your opinion on this matter, Mr. Holtzclaw. And I believe you stated the former method of having petitions from isolated groups had proved very unsatisfactory and, as you pointed out, you stated that in this talk. That is correct, isn't it?

A. I understood you to say what I wanted. I wanted to clear up what I wanted was immaterial.

Q. Immaterial or not, Mr. Holtzclaw, I would like to have you explain to us what your own desires were in a matter of that kind. I take it your own desire was to get away from it if possible, from the previous unsatisfactory method under which bargaining relationships had been conducted, was it not?

A. There had previously been no bargaining. We had had requests from employees of several departments for increases

in wages or changes in working conditions, and the receipt of those requests caused us to call together this group representing all employees of the company, at which meeting we explained to them their status under the National Labor Relations Act and told them if they wanted to bargain collectively with the company, which had been indicated by these petitions which had come in and the verbal requests, to proceed to form some sort of organization through which collective bargaining could proceed in an orderly manner.

101 Q. We were discussing this morning, Mr. Holtzclaw, certain petitions which you had received from the employees prior to May 20th. Do you recall that this was one of the petitions received by the company?

A. Yes; I recall this as the petition presented to Mr. Cole in the Norfolk shops.

Q. Now, are the names appended to this petition the names of men employed by the company at the Norfolk shops?

A. It is my understanding that they are.

Mr. VAN ARKEL. I will ask, Mr. Examiner, that that be—Did we reserve a number for that?

Mr. HILTON. No.

Mr. VAN ARKEL. Then, I will ask that it be received in

102 evidence as Board Exhibit 11.

Trial Examiner FORT. Make it Board Exhibit 11-a and 11-b, because there are two papers.

(The document referred to was marked "Board's Exhibit 11-a and 11-b," and was received in evidence.)

By Mr. VAN ARKEL:

Q. I will ask you to examine this photostat, Mr. Holtzclaw, and you state for the record whether or not that is an accurate photostatic copy of the petition received by the company.

A. It is a photostatic copy of the petition received by the company from members of the transportation division in Norfolk.

Q. I see. Do you recall about the date when that was received? Apparently there is not date on this.

A. I do not recall the date. We have a record of the approximate date, but I do not recall it.

103 (The document referred to was marked "Board's Exhibit No. 12" and was received in evidence.)

Q. Do you recognize these papers clipped together as the agreement which was entered into on August 5th with the I. O. E.?

A. I recognize this agreement executed on August 5th between the company and the I. O. E.

Mr. VAN ARKEL. We did reserve a number for that.

Mr. HILTON. Exhibit 9.

Mr. VAN ARKEL. I will ask, then, Mr. Examiner, that it be received as Board's Exhibit 9. At the same time I will withdraw the exhibit which was previously marked as Board's Exhibit 9 I have now physically withdrawn Board's Exhibit 9 in the record.

Mr. GIBSON. And that is substituted.

104 Mr. VAN ARKEL. And that is substituted.

(The document referred to was marked "Board's Exhibit No. 9" and was received in evidence.)

105 Mr. MOORE. Before you proceed further with the witness, Mr. Van Arkel, Mr. Holtzclaw reminded counsel during the adjournment for lunch of two or three other facts that he recalls about the May 24th meeting, and I would like to have him given an opportunity to make that statement.

Mr. VAN ARKEL. I will be very glad to give him that opportunity.

Mr. MOORE. I would like to have him have that opportunity.

The WITNESS. Counsel asked me if I had any remarks to make to the assembled employees after I read the copy of the paper of May 24th, which has already been submitted in evidence. I told him of a number of remarks that I had made, but I left out one remark, which I now wish to put into the record.

I advised the employees that if any adjustment were made in their wages as the result of any collective bargaining that might be carried on in the future, or if any adjustment were made in their wages or on any basis, such readjustment would be retroactive to June 1st. That was one week from the date that that meeting was held.

You also asked if anybody else was present at the meeting besides myself, when this paper was presented to the employees. I said that Mr. Moore was present. At the time, I thought you had particular reference to the executives of the company. I did not note that there was also present Mr. W. E. Wood, vice president of the Virginia Electric & Power Company,

106 and also vice president of the Engineers' Public Service Company of New York. Mr. Wood was also present at that meeting, but he took no part in the meeting.

By Mr. VAN ARKEL:

Q. I have a couple of questions in connection with that, Mr. Holtzclaw. Do I take from the fact that you mentioned wage adjustments at that meeting, that wage adjustments were at that time contemplated?

A. Wage adjustments were certainly considered a possibility by us, or we would not have made that statement, that we had received these petitions from Norfolk, and verbal requests from several departments in Richmond. We certainly considered that a wage adjustment was a distinct possibility.

Q. And by "adjustment," do you mean upward or downward?

A. Well, I think it only reasonable that we expected at the time it was an adjustment upward.

107 Q. One other matter that I forgot to ask you about this morning: We were discussing the meetings at which the supervisory officials were present, of May 20th, conducted thereafter to May 24th. When were you informed that those meetings had been held, and were you informed that those had been held on company property?

A. I was not informed as to where the meetings had been held.

Q. Were you informed that they had been held during

108 working hours?

A. I was not informed as to whether they were held during working hours; no.

Q. Were you given any details at all about the nature of those meetings?

A. Not that I recall. I do not have any idea as to who were to be present to represent any department of the company's operations. May I speak of another point right here?

Q. Yes; surely.

A. This morning, we referred to this as an election of employees, of special representatives to come to this meeting and hear me talk. I think, perhaps, too much stress was laid on what is an election. These supervisors were requested to go back and call their various groups together and tell them that Mr. Holtzclaw was going to talk at a certain hour at a certain place; if they would like to be present, we would be glad to have them there to listen to what he said. That method was determined upon because it was impossible to get 3,000 people together. I would have been just as well satisfied to have talked to every employee of the company in some large hall somewhere. As a matter of fact, we did not care how they were selected or whether they selected them or not. I do not know how they held the meeting;

I don't know where they held it. I have heard some of

109 these meetings were held on company property. I heard that some were held at night on the men's own time, and some were held at knocking-off hour, but I have no definite specific information of when a single one of those meetings was held or where.

Q. Was I correct in assuming from your testimony this morning, Mr. Holtzclaw, that the invitations which the supervisory employees were to give to the employees were not blanket invitations addressed to all employees to come and hear you speak to them?

A. No, they were not.

Q. They were, in effect, invitations for them to select representatives to come and hear you speak?

A. That is correct. If they had a hall large enough and if it had been convenient, I would have been glad to talk to all of them, but that would not have been convenient.

Q. So that because of the limitations, the necessary limitations of space, the instructions to the supervisors were that they would notify the employees to send representatives?

A. If the employees saw fit to send them.

119 Q. You stated, Mr. Holtzclaw, in your voluntary statement, that Mr. Wood was also present at this meeting of May 24th. Do you recall whether or not he made any remarks?

A. He did not.

Q. He did not?

A. No.

Q. He kept silent.

A. To the best of my recollection he just sat down in a chair like anybody else, and listened to what I had to say.

Q. Having refreshed your recollection during the luncheon hour, do you recall whether or not, in this speech that you made on May 24th, you made any remarks referring to strikes or labor disorders throughout the country?

A. I don't recall saying that.

Q. Do you recall whether you said anything about the menace of organization?

A. I did not.

Q. Do you recall anything else along that line, as a result of your refreshing your recollection during lunch time?

120 A. No; I do not.

Q. Now, you have identified, Mr. Holtzclaw, a notice dated April 26, 1937, introduced in evidence as Board's exhibit No. 3. Will you tell us what prompted you to post that notice?

A. That is the bulletin of——

Q. April 26th?

A. April 26th.

(Mr. Van Arkel handed a paper to the witness.)

The Witness. As I recall it, the Wagner Act was validated by the Supreme Court of the United States on April 12th, or thereabouts. Many remarks came up to me in a roundabout way as to what the right of employees were under the act and what was the company's attitude as to any activities that the employees might engage in, as a result of the validation of the Wagner Act. Many rumors came to me that the employees wanted to know their status, and this bulletin was issued as a result of that, as a statement of the company's attitude.

121 Q. Has the Virginia Electric & Power Company engaged the services of any detective agents, let us say, since July 1935?

A. The Virginia Electric & Power Company frequently engages checkers, so-called, who visit the various localities where we have busses and cars in operation, who ride the cars and check the efficiency of operation and the proper handling of fares. They come in, stay a week, make a report and get out. That is done at frequent intervals.

122 Q. It is being done up to the present time?

A. I assume so. I do not know. I never read a report of one of them yet.

Q. Through what agencies have those detectives been hired since July 1935?

A. I could not tell you. We can get that information from some other witness, but I do not know. There are four or five agencies furnishing that service. I do not know who they are.

Q. Were any of them hired through the Railway Audit & Inspection Company?

A. I expect so. I do not know.

Q. You do not know?

A. No.

Q. Were any of those hired to report on the labor activities of employees?

A. No.

Q. What?

A. No.

Q. Were any of them engaged at any time since July 1935 to report on the activities of the organizers who were attempting to organize the employees?

A. I have never seen a report of any checker or any detective on any character of labor organization or that had to do
123 with labor organization of any character, on the property of the Virginia Electric & Power Company.

Q. Do you know that the company has hired men to render such reports?

A. To render reports on the operation of cars and busses.

Q. Do you know that they have been hired by the company to render reports on labor organization activities?

A. Yes.

Q. Of its employees?

A. Yes. There have been no men hired to check labor conditions on its property since July 1, 1935.

Q. I say, "labor activities."

A. I say, labor activities. May I refer you to a copy of the questionnaire to the company by the La Follette Civil Liberties

Committee, which covered that subject quite fully. You may have it in your files.

Q. Have you a copy of that report available?

A. I do not know whether we have or not, but you must have it. That question was answered fully in that report, the amount of money spent, and what agencies received it.

Q. I will show you, Mr. Holtzclaw, a report dated June 25, 1937. Is that your signature appended to the report?

A. Yes. That is right.

Q. Now, Mr. Holtzclaw, this report states that in 1933 the company paid the Railway Audit & Inspection Company or its affiliates $6,835.39; that in 1934 that company paid the same company or its affiliates $8,246.85; that in 1935 they
124 paid that company or its affiliates $5,810.99; and in 1936 they paid that company or its affiliates $4,493.07. Were those figures accurate, so far as you knew, at the time this report was made?

A. So far as I know. I did not prepare the report. It was prepared, as I understand it, from a summation of the vouchers paid the various agencies that furnished that class of service.

Q. And it says further, the question in the questionnaire being: "How many operatives of these companies have you in your plant or plants at the present time?"

And it says: "See note attached."

And the note attached under 2 (c) states:

"None in plants. One man in Norfolk, Virginia, who reported generally on any matters affecting the company's interest."

And then under 4 (b), it states:

"We are advised that the man referred to in 2 (c) was once a union member but has not been affiliated with any union during the period his services were rendered to this company."

Was that information correct at the time?

A. That, to the best of my knowledge, is correct, although I did not know the man I do not know his name; never spoke to him, never read a report that he had written; never
125 saw a report that he wrote; did not even know his name or number or anything else. I understand there was one man down here about 18 months ago.

Q. You said further:

"Much of the reporting made by the man referred to in 2 (c) is done by word of mouth and I understand none of these written reports are preserved."

Is that correct?

A. Let me look at that, will you? I know very little about this.

(Mr. Van Arkel handed the document to the witness.)

Mr. VAN ARKEL. That is part of this questionnaire, is it not?

The WITNESS. Yes. It being part of the questionnaire, I am quite sure at the time I signed it I felt it was correct.

By Mr. VAN ARKEL:

Q. Under question 4, the question is:

"Do or did the operatives of any of the agencies employed by you furnish written or oral reports on labor organizations, whether employee representation plans or otherwise, or on labor organizing activities in your plant or plants?"

And the reply to that question is:

"The man in Norfolk, referred to in 2 (c), has reported
126 from time to time on labor organizing activities among our Norfolk employees."

Was that correct at the time this report was made?

A. At the time the report was made, that must have been correct.

Q. Now, Mr. Holtzclaw——

A. I do not know. That questionnaire is signed by me on information that was supplied by someone else.

Q. Under 4 (a), the question is:

"Do or did they report to you or your plant officials the names of active labor organization members?"

And the answer to that is:

"Yes. Labor men interested in organizing employees."

Was that statement correct at the time it was made?

A. It must have been.

Q. And is it your present memory that that was one of the purposes?

A. It must have been correct at the time. That man has not been there, nobody has been there, for 18 months, according to my knowledge; no.

Q. Under 4 (c), the question is:

"What instructions do or did they have regarding their activities in labor organizations?"

And the answer to that question is

"One of purposes for which employed was to report on labor activities among employees in Norfolk."

127 Was that correct at the time the statement was made?

A. It must have been correct.

Q. Now, at the close of this questionnaire, I notice this statement:

"The man referred to in 2 (c), because of ill health, confining him to his bed with an illness from which he is not expected to recover, has made no report since between the 15th and 20th

of May, 1937. His service was definitely discontinued as of May 31, 1937, and no one has been engaged to take his place."

Was that statement correct at the time it was made?

A. I understand that was a correct statement.

140 By Trial Examiner Fort:

Q. Now, at this meeting when you addressed these employees was Eugene Underwood present?

A. I do not know.

Q. How prominent a man is he or was he in the factory prior to the organization of this I. O. E.?

A. I do not know. Underwood was assistant to—what
141 we call the system operator, as I understand it. I did not know Underwood personally. It just so happened that his work never threw him in contact with me.

Q. When you say "system operator," what does he do?

A. A system operator is a man that sits up and talks with the operators in the Roanoke Rapids power house, the Norfolk power house, and the Richmond power house. He just coordinates the activities of all generating plants.

Q. He is not an ordinary employee, is he?

A. Oh, no; he is an official.

Q. Does he have an assistant to him? Is he a man of some official standing? Does he act when the operator is absent?

A. No.

Q. Just what does he do to assist?

A. He is a clerk in his office.

142 Q. I judge from the fact that prior to the speech you and your counsel had gone over it and discussed it in detail you must have considered it a matter of considerable importance to the company as well as to the employees.

A. That is correct.

Q. To promote harmony between the management and the employees?

A. That is right.

Q. How did you follow that up? What did you do afterwards?

A. After the meeting of May 24th?

Q. Yes.

A. Nothing.

Q. You just left it cold after you made those statements?

143 A. Left it absolutely cold and took no part in anything like that from that date on. The next thing I knew, as I testified this morning, was on July the 19th—the next thing I knew of an organization——

Mr. MOORE. May I interrupt? You might be interested to know what happened on June 15th.

144 The WITNESS. June 15—I had a visit from R. E. Elliott, of the Norfolk Transportation, who at that time was, according to my information, attempting to organize an independent association among the Norfolk employees, not affiliated with a national organization, but an independent organization. He requested that the company recognize the Norfolk Operators' Organization—I do not remember what he called it—and I told Mr. Elliott, just as I stated today, that we could not do that in fairness to the company and in fairness to the men, because it just represented a small unit of the company's operations; that if they wanted collective bargaining, to get a real organization, select people to come and see the company, in accordance with the statement made on May 24; that we did not see fit to deal with a small unit, a unit as small as that.

The next I knew was July 19th, when Mr. Underwood came into my office with this letter and the contract, and to the best of my knowledge I never before saw Mr. Underwood to know who he was.

By Trial Examiner FORT:

Q. Mr. HOLTZCLAW. I understood you to describe the condition, the way you had these people coming from various groups, as chaotic. What did you mean by that?

A. Well, I simply mean this: We have many departments in this company. It would be foolish to go over and list them. The transportation department in four different cities,

145 the shop department, the meter crew, and the service crew—probably 50 or 60 various departments; and if they organized those departments into special bargaining units, I would devote and the other executives of the company would devote all their time to bargaining with the employees. If they organized themselves into a real unit, we would do the whole job at once and be done with it.

Q. Then, you were anxious to have some organization among the employees?

A. I was not anxious to have it indeed, they have a right to have it.

Q. You were referring to bargaining in that chaotic condition?

A. There was no chaotic condition, because there was no collective bargaining before, Mr. Examiner.

Q. Well, there has been a period which you spoke of——

A. No.

Q. I am just trying to get the facts.

A. There was no collective bargaining with the Virginia Electric & Power Company. Before July of last year it has all been handled individually.

Q. You mean you have not recognized the right of the employees to do that?

A. It has not been a matter of recognizing or not recognizing. There has been no union in the company that I know of

146 Q. You mean there has been no——

A. No organization that has asked to be recognized.

Q. Prior to when?

A. Prior to July

149 Mr. VAN ARKEL. Mr. Examiner, I have just been handed a copy of the original summary of the membership roll of the Independent Organization of Employees which was enclosed with Board's exhibit No. 7, which is a letter from Eugene T. Underwood to Mr. Holtzclaw, dated July 26, 1937.

I would ask that this copy be marked "Board's exhibit 7-B," so that it will be included with the same exhibit, Mr. Examiner.

Trial Examiner FORT. Board's exhibit No. 7 was received in evidence. The document to which you now refer will be marked "Board's exhibit 7-A."

(The document above referred to was marked for identification "Board's Exhibit 7-A.")

Mr. VAN ARKEL. Mr. Holtzclaw, is this a correct copy of the exhibit which was included with the communication of July 26th, Board's exhibit No. 7?

Mr. HOLTZCLAW. It is; yes.

150 ANTHONY R. REUTT, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. HILTON:

Q. Will you please state your full name, Mr. Reutt?

A. Anthony R. Reutt.

151 Q. Where do you live?

A. 225 16½ Street.

Q. In Norfolk, Virginia?

A. Yes, sir.

Q. Were you ever employed by the Virginia Electric & Power Company?

A. Yes, sir.

Q. In what capacity were you employed by the company?

A. First, as a conductor; then as an operator when they turned them into one-man cars.

Q. How long have you been employed by the company?

A. Almost 16 years.

152 Q. While you were employed by the company did you ever learn of any labor organization activities among the men, Mr. Reutt?

A. Yes, sir. I have heard about the C. I. O. and also about others, about the A. F. of L.

Q. When did you first learn of any labor organization activities among the employees?

A. About the middle of April.

Q. Of 1937?

A. Yes, sir.

Q. How did you learn of those activities?

A. Through reading newspapers and also I was approached by one or two men who asked me to join the C. I. O.

Q. Do you know what union of the C. I. O. it was?

A. The Transport Workers.

Q. Did you become a member of that organization, Mr. Reutt?

A. No, sir.

Q. Did you ever discuss any working conditions with any of your fellow employees of the company?

A. No, sir; I did not.

Q. Did any of them ever discuss working conditions with you with respect to increased rates of pay, shorter hours, and so on?

A. Yes; on two occasions.

153 Q. When was the first time that you had such a discussion, Mr. Reutt?

A. Toward the end of April.

Q. That is, April 1937?

A. Yes.

Q. Proceed, please.

A. Toward the end of April I was approached on two occasions by a group of men who asked me to lead them to Mr. Bishop's office, that is, the Superintendent, and ask for more money and better working conditions. I refused because I had in mind two years previous there was a man named Dunbar, Charles Dunbar, who was dismissed.

Q. What kind of work did Charles Dunbar do?

A. Car operator.

Q. Did you personally know him?

A. Yes.

Q. Go ahead, please.

A. I laughed at the men and told them I didn't want to do anything about it or have anything to do with it. So early in May I came down to the car barn——

Q. You mentioned Mr. Dunbar. What happened to Mr. Dunbar, if anything?

A. He was dismissed. It was passed around that he was dismissed for union activities. During that time there were about 15 or 16 men signed up to see Mr. Bishop. When
154 they went to his office I was told he asked them were they members of the union.

Mr. MOORE. Just a minute, please. I object to hearsay like that.

Trial Examiner FORT. Of course, it will not be admitted for the purpose of establishing the truth or falsity of the events but as showing what motivated him in his action. It will be admitted for that purpose.

The WITNESS. And that Mr. Bishop asked them whether they were members of the union or not. They all denied it, and he said "all right."

I refused on account of that. Then later, about in the early part of May I was waiting to go home, after getting my things. I worked late. Mr. Bishop called me over. He was in a car.

By Mr. HILTON:

Q. Just a moment on the first meeting. How many men were there in this group discussing wages and hours, and so on?

A. There were probably six or eight of them.

Q. Can you name some of them?

A. I can name three—Mr. Foxwell, Mr. Beasley, and Mr. Hopkins.

Q. How were they employed with the company?

A. They were all car and bus operators.

Q. When was this discussion held?

155 A. That was the latter part of April 1937.

Q. Where was this discussion held?

A. Right in front of a restaurant there. Right alongside of the carbarn there was a restaurant at that time.

Q. You stated you later talked to Mr. Bishop himself? Is that correct?

A. Mr. Bishop asked me if I wanted to go home. He wanted to take me home.

Q. Who is Mr. Bishop?

A. Superintendent of Transportation. When we got out on 20th, before we got to Granby Street he stopped and asked me what have I heard about the men discussing about what they want. I told him, "Well, there is a lot of discussion going on," that different men wanted different things, and some men wanted 60 cents an hour and some wanted 65 cents an hour and some

75 cents an hour; also how the working conditions and the hours would remain, and some of them wanted eight hours' work.

He said, "Well, you men ought to be able to come together and start something."

I asked him what it was? He said, "Well, you know how it is. You don't want no C. I. O. or any other organization to come in here and tell you what to do, because the company is not going to recognize them and, in fact, they have money put away for the purpose of fighting the unions."

156 Then he went on to tell that the unions were no good and that they were nothing but trouble-makers and that the best thing for the men to do is to get together, present their petition to him, and he would take it up to Richmond.

I didn't want it. I refused. I asked him to put someone else in that would be more suitable.

He said, "No; you are all right, and I believe you can do it."

So after talking a while longer I told him "All right."

Q. You say you first refused to do it?

A. Yes.

Q. Why did you refuse to accept this leadership?

A. Well, because I was still afraid.

Q. What were you afraid of?

A. I didn't know what it was all about. I thought probably that they wanted to get my opinion of what I wanted to do and then, as I say, turn me loose.

Q. Had you heard of that being done?

A. I still had Charlie Dunbar in mind. It has been known previously that the company would not stand for any labor organization coming in amongst the men.

Q. Had Charlie Dunbar been active in the organization or formation of any union two years previously?

A. I don't know personally except through hearsay that that was the reason he got fired.

157 Q. After your conservation with Mr. Bishop, did you then do anything toward the formation of any union at the garage?

A. Yes, sir.

Q. What did you do?

158 A. I went and asked Mr. Williford.

Q. Who is he?

A. Secretary of the Y. M. C. A.

Q. Is that the V. E. P.-Y. M. C. A.?

A. Yes. I told him Mr. Bishop suggested that we have a meeting and get the men together to vote for representatives to go to Mr. Bishop. And I asked him to paint two signs for me. So I went alongside of a shop and got these cardboards that

are used for advertising purposes and I gave them to Mr. Williford, and Mr. Williford painted the signs. I think the meeting was to be held four days after we posted them.

Q. Do you recall the date you posted the notice?

A. No; I don't recall.

Q. What month was it?

A. Early in May.

Q. Of 1937?

A. Yes.

Q. Where did you post the notice?

A. Right in the dispatcher's office. There were two of them. One was alongside of the cashier's cage and the other was on the side of the wall.

Q. What did that notice say?

A. That there would be a meeting held of bus and car operators, and it stated the morning meeting would be at 10:30 and in the afternoon I think it was four o'clock, and that it would
159 be important, and please come, or something like that. And I put down that it was important.

Q. Did your name appear in the notice?

A. No, sir.

Q. How long did the notice remain posted?

A. Up until the date that the meetings were held. There were two meetings.

Q. Where were the meetings to be held?

A. Over the dispatcher's office in the Y. M. C. A.

Q. Is that property of the company, so far as you know?

A. Yes, sir.

Q. Did you hold these meetings?

A. I opened the meeting. We were going to elect a chairman; but before the meeting progressed very much Mr. Elliott got up.

Q. About how many men were present at the morning meeting?

A. I should think there were about 125.

Q. Were all of them connected with the transportation system of the company?

A. Yes; all of them were connected with the transportation system of the company with the exception of a few; that is, the dispatcher, Mr. Fields, was in there, and also the superintendent's son, Mr. Warren Bishop, and he was in there.

Q. What kind of work did Warren Bishop do at that time for the company?

160 A. I don't know. So far as I know, at that time he was not employed.

Q. Was Mr. Williford there?

A. Yes; Mr. Williford was there at the beginning; but I think Mr. Elliott asked him to step out.

Q. And did he step out?

A. Yes.

Q. What did you do at this meeting?

A. I called the meeting to order and, as I said, Mr. Elliott stepped out and he had already prepared a request from the employees to the company as to the working conditions and the hourly rate of pay and things like that, and he presented it to the men. Then someone voted on the chairmanship, and Mr. Elliott was elected as the chairman for that meeting.

Q. Did you announce the purpose of the meeting to those present?

A. Yes.

Q. What was that announcement?

A. It was for the purpose of electing representatives or a committee to present the petition to Mr. Bishop for an increase in wages and better working conditions.

Q. Did you have any petition prepared yourself to present to the men?

A. No, sir.

161 Q. I will hand you what is in evidence as Board's Exhibit No. 12 and ask you if that is what Mr. Elliott presented to the men at that meeting?

A. Yes, sir; that looks like it.

Q. Was that petition circulated at that meeting and signatures obtained?

A. Yes, sir.

Q. Did you sign the petition yourself?

A. Yes, sir.

Q. Do you know approximately how many men at that meeting signed that petition?

A. I understand it was around 200.

Q. At this meeting in the morning?

A. No; at the meeting in the morning it was about 125.

Q. Of the 125 men do you know about how many signed that petition?

A. I think approximately all of them signed it. Very few of them got out without signing it. Those that got out before the meeting was over probably did not sign.

Q. How long did the meeting last?

A. I suppose it lasted an hour.

Q. Were any other matters discussed other than those which you have related?

A. No, sir. Mr. Elliott, before he spoke, read the
162 Wagner Labor Act and he also told the men that they were

protected so far as the company was concerned in formin a union. And after that the proposal was, as I say, for differe things, and the men all voted on a committee to see Mr. Bishop.

Q. Did all of this occur during working hours?

A. Yes, sir.

Q. Were you ever deducted for the time you spent at thi meeting?

A. I was working late. I didn't go to work until aroun four o'clock.

Q. Do you know whether or not any of the other men wh attended this meeting were ever deducted for attending thi meeting?

A. No, sir.

Q. Did you attend the second meeting held on this same day?

A. No, sir. I went to work.

Q. Do you know whether or not Mr. Elliott attended tha second meeting?

A. Yes; he did.

Q. Was there any committee elected at the first meeting, that is at the morning meeting?

A. Yes, sir. Six men were elected, three from the bus oper ators and three from the cars.

Q. Who were selected?

163 A. Mr. Elliott was Chairman, Mr. Hough was selected.

Q. How do you spell Mr. Hough's name?

A. H-o-u-g-h. And there were also Mr. Tehan, Mr. Slaughter, Mr. J. R. King, and myself.

Q. And Mr. Elliott was Chairman of that committee; was he?

A. Yes, sir.

Q. What, if anything, did this committee do after the petition had been signed by most of the men who attended these meetings?

A. I understand two or three days later it was presented to Mr. Bishop.

Q. Do you know who presented it?

A. I think it was Mr. Elliott.

Q. He was the Chairman of the committee?

A. He was the Chairman of the committee for that purpose.

Q. The committee was to give the petition to Mr. Bishop?

A. Yes.

Q. Were you with the committee when the petition was presented to Mr. Bishop?

A. No, sir; I was not.

Q. Was that several days after the meetings had occurred?

A. Yes.

Q. Do you recall the next time that you and the committee met with Mr. Bishop?

163 A A. Yes, sir; I do.

Q. When was that?

A. That was probably a week or two later we went to Mr. Bishop's office.

Q. Would you say that would be around the 20th of May, 1937?

A. No; I don't think so, because it would probably be around the 16th or 17th.

Q. The 16th or 17th?

A. Yes, sir.

Q. How did you happen to meet with Mr. Bishop on this occasion?

A. Word was left for the committee to see Mr. Bishop.

Q. Did the entire committee see Mr. Bishop?

A. Yes; six of us went to Mr. Bishop.

Q. Where did you meet with him?

A. In the back room of his office.

Q. What time of day did you meet?

A. That was between 10 and 11 o'clock in the morning.

Q. Was that your normal working shift?

A. No, sir. All of the men worked late with the exception of Mr. Hough. He works a swing run, that is, part in the morning and part in the evening. Mr. Elliott was on sick leave at that time. We went to Mr. Bishop and he talked to us and tried to explain about the men organizing amongst themselves,

164 and also that it would be the best thing for the men, and that he would be glad to tell them anything that they didn't know. He also suggested that we go to see Mr. Throckmorton. And I believe that is the Vice President in Norfolk. And all six of us went to Mr. Throckmorton's office.

Q. Did you see Mr. Throckmorton?

A. Yes, sir.

Q. What did Mr. Throckmorton say to the committee?

A. He didn't say very much except he said the country seems to be sweeping with labor organizations. And he said it is just a mania like it was during the war-time; that everybody was for the war and nothing could stop it. That was the most of the talk he made. He didn't say much either way except that.

Q. Did either Mr. Throckmorton or Mr. Bishop suggest that this committee obtain the services of a lawyer for the purpose of starting this organization?

A. Not at that time. That was later.

Q. Was that all that occurred at these meetings with Mr. Bishop and Mr. Throckmorton about the 16 or 17th of May, 1937?

A. Yes.

Q. Do you recall the next time you talked with anyone connected with the company?

A. The next time we were called in the office and Mr.
165 Bishop told us there was a meeting to be held that night at Richmond and it would be addressed by Mr. Holtzclaw and that the following night he would be here in Norfolk and would address the Norfolk employees. So at Mr. Elliott's suggestion I went with him and with Mr. Mack Hough. We wanted to hear what Mr. Holtzclaw had to say.

166 Q. Did you tell anyone in Norfolk you were going to Richmond to attend this meeting that Mr. Holtzclaw was going to address?

A. No, sir. It was unknown to anyone except the three of us.

Q. When you got off from work at that time did you give any reason why you wanted to be off?

A. No, sir. I just asked the dispatcher could I be off.

Q. Did you attend this meeting?

A. Yes.

Q. Where was the meeting held?

A. In the Electric Building in Richmond.

Q. About how many employees were present at that meeting?

A. I suppose 70 or 80.

Q. Who were present on the part of the management of the company?

A. Mr. Holtzclaw, Mr. Moore, and Mr. Wood.

Q. Who first addressed the meeting?

A. I think it was Mr. Holtzclaw first. First, he spoke that he didn't know why the company had elected him as President of it except for the reason that he has always been just and treated his fellowmen right. Next, he said that he was petitioned by the employees of Norfolk for more money and more wages. But I think before that he said that when he got up in the
167 morning and picked up a paper he saw where there were strikes and fights, where the men beat each other up, and also that it happened in Richmond the week previous to that. Then he spoke from the prepared statement.

Q. I hand you what is in evidence as Board's Exhibit No. 4 and ask you, after reading that, if that was the speech that was made?

Mr. Hilton. It is already stipulated that that speech was read, and the witness stated he read it from the prepared statement. We will save a great deal of time by not going into it. I will withdraw the last question.

By Mr. Hilton:

Q. You stated that Mr. Holtzclaw read from the prepared statement. Is that correct?

A. Yes.

Q. Did he make any comments or remarks other than the prepared statement from which he read?

A. Yes, sir.

Q. What?

A. He stated he could not bargain with the employees by themselves, that they would have to form some organization, as it would entail work, as he stated previously, and that would be the only way that he would bargain. He also stated that the increase in pay would be retroactive to the first of June
168 and that just as soon as the the employees would get together and appoint their representatives then they would start to bargain or get their increase after the bargaining; but that they couldn't get any increase up until then; and that is, they wouldn't get their money, that the increase would be beginning from June 1st, and they wouldn't get it until they formed some organization to bargain, and come to an agreement.

Q. Did Mr. Holtzclaw make any statement with regard to the kind of organization that should represent the employees?

A. I don't remember.

Q. Do you recall whether or not he spoke on crafts or particular departments or a system-wide organization?

A. I don't think he did.

Q. Do you recall anything else that Mr. Holtzclaw stated to the employees who were present that night?

A. No; except that there were several individual questions that were asked, and he referred them to Mr. Moore. One colored fellow spoke about the boiler, that he was not getting the same pay although he was doing the work of a mechanic but was getting a labor's pay. Another colored fellow said all he wanted was more money because the salt pork or herring was higher than he had ever paid before in his life.

Q. Did he at any time say unions were a menace?

A. No more than to read from the prepared statement
169 and make a few comments on that, and also before when he made the statement about being fair to his employees, and also the statement about picking up the newspaper in the morning and seeing where there were strikes and men fighting among one another and beating each other's heads off.

Q. Did he at any time say unions were a menace?

A. No, sir; he did not. After Mr. Holtzclaw addressed us Mr. Wood got up and he spoke. He made a rather peculiar comment, that he did not like leaving Richmond because he liked the

people there and he knew the conditions he sees throughout the country and he was glad to be away from all of the strife, and he was going to allow Mr. Holtzclaw to battle it out. After that that was about all.

Q. After Mr. Holtzclaw and Mr. Wood had finished their speeches did the meeting then adjourn?

A. After Mr. Wood spoke, yes, most of us went out. There were some employees left in a room. I don't know whether it was anything—Well, I mean when they first went in there each one of us was asked to identify ourselves, that is tell his name and the department you worked for.

Q. Did you discuss the speech that Mr. Wood and Mr. Holtzclaw had made to the employees with your fellow employees after this meeting?

A. Yes. We talked it among ourselves when we got out and also when we were coming back to Norfolk.

170 Q. Can you tell us what those discussions were?

A. The discussion was this, that we had to organize all of the employees together in order for the company to give us the raise, and that it was necessary, that the company would not bargain or accept any outside organization, that is, the A. F. of L. or the C. I. O., as we addressed them at that time.

174 Q. Just a moment before you leave that point. You stated previously that at one of the meetings with Mr. Bishop a constitution and bylaws or the getting of a lawyer was suggested by Mr Bishop?

A. Yes, sir.

Q. What meeting was that when that occurred?

A. That was the meeting just previous to the time we elected less members or the vote we took. That was around the early part of June. I think it was about a week after the 24th. I think it was around the first of June.

Q. Around the first of June 1937?

A. Yes, sir.

Q. What else did he say besides suggesting getting the lawyer?

A. He said we could chip in ten or fifteen cents a piece
175 and it wouldn't cost us as much money as it would if we would join some other union and pay someone else, that we could easily get a lawyer for a small sum that would help us in formulating our own organization.

Q. Mr. Reutt, after you received Board's exhibit No. 13 did you do anything yourself toward starting an independent organization?

A. No, sir. It was agreed amongst us four men that the two highest men, that is, those with the highest votes, or the man

with the highest vote would be the chairman on one side, and Mr. Elliott was the Chairman, and then the next highest would be with him from the car side, which was Mr. Hough. Mr. Hough and Mr. Elliott, we left it up to them to work out the organization because we didn't want to lose too much time.

Q. Did that organization have any name?

A. Yes. Mr. Elliott proposed his own constitution and bylaws. He called it the Employees Association or Committeemen, I think it was.

Mr. HILTON. I will ask that this be marked for identification as Board's exhibit No. 14.

Trial Examiner FORT. It may be marked for identification as "Board's exhibit No. 14."

(The document above referred to was marked for identification "Board's exhibit No. 14.")

176 By Mr. HILTON:

Q. Mr. Reutt, I show you this document which has been marked "Board's exhibit No. 14" for identification and I will ask you if you have ever seen any document similar to this exhibit.

A. Yes, sir. That is the one.

Q. Is that the document that Mr. Elliott prepared?

A. Yes, sir.

Q. And was that the name of the Association that Mr. Elliott and Mr. Hough were to head, Mr. Reutt, for the transportation employees?

A. Yes, sir. In the meantime the committee began to meet in a company building, the V. E. P. Co. Building on the sixth floor, I think they call it. They have a large assembly hall there. At the meeting Mr. Elliott distributed these. And he suggested the committee outlined a form of the organization.

Q. How did you happen to have this meeting on the sixth floor of the company building?

A. Well, at the time we were in Richmond at the meeting in Norfolk they had formed a committee and there was a chairman who was elected.

Q. Who was the chairman?

A. I couldn't think of his name, but I think it was Nicholson. He notified the men of the meeting.

Q. When was this meeting held?

177 A. At night, about eight o'clock.

Q. About how many were present at that meeting?

A. I should think there were about 30, between 25 and 30 present.

Q. Who were the members generally composing this committee?

A. Each department was supposed to vote for their own representatives, and these representatives were the committee.

Q. Had you voted for any representative from your department?

A. Well, the men voted for me to represent them.

Q. Tell us what happened at this meeting in the building between the 10th and the 14th of June 1937.

A. When Mr. Elliott brought out and passed around these the transportation committee was in favor of it, and the other committee also, especially from the Reeves Avenue. I mean except the Reeves Avenue. They were opposed to it.

Q. What is that?

A. That is where the power plant is. They were opposed to it, especially Mr. Brown and Mr. Tatem, I think.

Q. Were they the representatives from the Reeves Avenue plant?

A. Yes. They were the representatives from their department. They had an election for a temporary chairman until they formed a union, and Mr. Tatem was elected as the temporary chairman.

178 Q. Did you vote for him as chairman?

A No, sir. They wouldn't allow four of us to go, but only one man, I think. I wanted Mr. Elliott to go but he wouldn't agree to it, so none of us voted.

Q. Did your committee from the transportation department continue to meet with the committee composed of members representing the other plants in the Norfolk Division?

A. The next thing we were told that there would be a meeting of all employees in the Blair High School.

Q. Well, do you recall when that was?

A. I think it was on the 21st of June. It was either the 21st or 22nd.

Q. Going back to the meeting on the sixth floor of the company building in Norfolk, how did that meeting finally end up that night, so far as your committee was concerned?

A. It seems like we were left out in the cold. That is the other committee took charge of things. And later Mr. Tatem told me that Richmond had already formed a union and that they appointed a lawyer or, that is, they have a lawyer, and for him to draw up the contract, or the bylaws and constitution, rather, and that they would have a meeting in the Blair High School, at which time he would explain certain provisions of it to those who didn't understand them.

181 Q. You stated that there was a meeting held on June 22, 1937, in the Blair Junior High School?

A. It was June 21st.

Q. Was it June 21st?

A. I think so; yes, sir.

Q. What was the purpose of that meeting?

A. Mr. White, from Petersburg, spoke and read from the bylaws and constitution and he asked if everybody understood it and, if they did not, to ask him and he would try to clarify certain things.

Q. Was Mr. White the attorney for the Organization, Mr. Reutt, or for the committee?

Q. He was voted upon in the committee, of which I think most of the members were from Richmond and Petersburg. I didn't get up there. In fact, I wasn't notified to go up there.

Q. How many persons were present at this meeting at the Blair Junior High School?

A. I should think about six or seven hundred.

182 Q. I believe you stated that the constitution and bylaws were read to those present.

A. Yes, sir.

Q. Was there any discussion of the constitution and bylaws, Mr. Reutt?

A. No more than Mr. White tried to clarify certain points to those that didn't understand them.

Q. Were there any questions propounded to Mr. White with regard to various sections that he had read?

A. Yes, sir.

Q. Were there any amendments suggested to the constitution and bylaws?

A. Mr. White explained we should allow this to go through and then, as the cases necessitated, there was a provision in the bylaws and constitution to change.

Q. Was the constitution and bylaws finally adopted that night?

A. It was a case of being adopted. Someone was already sure of the constitution being adopted.

Q. Was any vote taken by these six hundred employees at that meeting?

A. No, sir.

Q. What, if anything, did Mr. Elliott do at that meeting, Mr. Reutt?

A. He got up and asked Mr. White to speak, and he
183 shook hands with him, and then he went on to tell that he tried to see Mr. Jones and Mr. Holtzclaw and that neither one of them would bargain with him; when he came back he went to see Mr. Carroll and Mr. Carroll put his arms around him and told him he was too smart a man to work as a bus operator, that

he could get a better job. He also stated that he had it in black and white that another company official was running to his home and was asking him to do certain things, which he refused to do.

Q. Did he say anything about this general committee that had called these various meetings?

A. No, sir; except that he said this was a company union and that he was going to join the C. I. O., and that if there was anyone in there that had a card he would walk right up to him and sign it.

Q. Do you know whether or not he did join the C. I. O. that night?

A. I understand he did.

Q. You understand he did?

A. I understand he did.

184 Q. Do you know whether or not any C. I. O. organizers were present at that meeting?

A. They were; yes, sir.

Q. Now, did there come a time when the employees association of committees became connected with any international organization?

A. Not to my knowledge. The I. O. E. was formulated in Richmond and it was found that that is the one that would be adopted. After Mr. Elliott's speech, I got up and spoke in rebuttal. Previous to that——

Q. What did you say about the meaning of the words "Blair Junior High School?"

A. I told them that I didn't believe the company had offered Bob Elliott a job, and I told them, in fact, that Mr. Hough, who was continuously going with him, told me that Bob Elliott was no good. Now, previous to that, we had one meeting at the company Y. M. C. A. Mr. Underwood tried to address the men, and Mr. Elliott asked him wasn't it true that he worked in the back of Mr. Holtzclaw's office, that he was a company official. Mr. Underwood denied it. He said that it would be the best thing for the men to organize their own union, that if they joined any other union and if there was any trouble, that the company had a lot of men, and he cited one case where the company sent men by airplane from Richmond to Texas, if I am not mis-

185 taken, to show just what the company could do. Then, later on, the company's officials went to Richmond from Norfolk here, and they had a meeting——

Q. When was this meeting where Underwood made those statements?

A. That was around June, I think.

Q. With respect to the speech that Mr. Holtzclaw made on May 24th——

A. Yes, sir.

Q. How long was it after that?

A. I suppose that was about three weeks.

Q. About three weeks later.

A. Yes.

Q. What kind of a meeting was this where Mr. Underwood made such statements?

A. At that meeting it was when it was voted upon and decided to give Mr. Elliott thirty days to see what he could do otherwise with the company, and Mr. Underwood spoke at that time——

Q. Did you ever attend any other meetings of this committee, when Mr. Underwood was chairman or spoke at any such meetings?

A. No, sir. We had our own committee, and I attended them.

Q. Do you know what, if anything, happened to Underwood in connection with this other committee?

A. Elliott resigned, I understood.

186 Q. Was it shortly after the time that Elliott had questioned his right to be on the committee?

A. Yes, sir. After Underwood—just previous to the time that the Blair High School, Mr. Bishop asked me if I had a copy of the bylaws and constitution that Mr. Elliott proposed, and he said his daddy was in Richmond with the officials and wanted it. I had one but didn't give it to him. I don't know what exact words I told him, but I would get them later. In the meantime, we went and started talking, and Mr. Bishop—Warren Bishop—told me that the company had someone backing, behind Elliott. Well, I didn't know all the things that were going on with him, except Mr. Hough, and he also told me that the company had one of the smartest labor spies of any time, but at that time he was in the hospital. I tried to find out who the man was in the hospital, for my own information. He also said that all the committeemen were being spotted, and just as soon as the union would form, they would all be dismissed.

Q. When was it that Warren Bishop told you that?

A. That was approximately the 8th of June.

Q. 1937?

A. 1937; yes, sir.

187 Q. Did you ever have any conversation with Tatem in regard to signing up members for I. O. E.?

A. Yes. I told Mr. Tatem that I didn't like the job very well, because so many men were antagonistic toward me, seeing I was working trying to organize the company union, which would be detrimental toward them, and I told them I wished there would

be some way that I would be left out of it and it is rather hard for me to get them, anyway, because at that time we only had a very few members, and he told me, "Well, go ahead, and if you get either eight or ten, it is all right, and then you will be the representative of these men with the majority of the employees in the Richmond division, and if they all signed up the company would bargain with them, and then they wouldn't have to have Norfolk to be with them." When I went back I tried to express that to the men, and I asked them to sign the cards. He told me he was going to send me some of these I. O. E. cards, and I tried to persuade the men to join it by telling them what Mr. Tatem said to me.

Q. Did you ever get any men to sign up with the I. O. E. while you were working?

A. Yes.

Q. Did you ever talk to any men about the I. O. E. and sign them up while they were working?

188 A. Yes.

Q. Did you ever pass out any membership application cards when any of your foremen or supervisors were present?

A. I couldn't say that. I don't know. I wasn't looking around to see who was present. I passed everybody the word and tried to persuade them to join the I. O. E., telling them just the benefits that they would lose or that they would get if they joined the I. O. E.

Q. Over a period of how long did you sign up members for the I. O. E.?

A. Approximately for a little over a month.

Q. Was anything said to you by any of your foremen or supervisors because of your doing that on company time?

A. No, sir.

189 Q. Did any of the foremen or supervisors of the company have anything to do with that election?

A. Well, not directly. The only thing that I understand is Mr. Edwards, I think, the supervisor—there had been

190 complaint about he was trying to interfere with the men, and I tried to tell him if they wanted to succeed in putting this union over, the best thing to do, that the company officials should keep their hands off and let the committee do the work.

Q. What was the result of the election held in the Transportation Division?

Q. While you were signing up members for the I. O. E., did you ever tell any of the prospective members that this organization would enter into an agreement with the company?

A. Yes. I tried to impress on them, just as I understood it to be from Mr. Bishop, that the company would gladly bargain with

the men, and that they would get more out of them if they didn't join any other organization, whether the A. F. of L. or the C. I. O., that the company wouldn't recognize it and they would have a lot of trouble, just as they did previously, about 17 years ago, I think. They had a union and they went out on strike, and they lost out; they lost seniority and all, and I tried to impress on them—in fact, after the speech at Blair High School, I had quite a number of men that promised to leave the C. I. O. and come back and join us, join up with the I. O. E.

191 Q. Would you use that as an argument to get the employees to become members of your organization?

A. I used the argument that we are not in a position to strike, that most of us are—most of us didn't have anything; we didn't have no organization or nothing, no money saved up, and the company wouldn't bargain with us, and it would be foolish for us to fight them, and I got most of the men——

Q. Did you ever tell them what kind of an agreement the I. O. E. would enter into with the company?

A. No, sir. I didn't know myself.

Q. Did you ever make any argument or use as an argument the fact that a closed-shop agreement would be entered into?

A. Yes; I suggested to the men that went up there—see, there were a lot of fellows that were making it pretty tough for me because I voted for this I. O. E., the men that were in the C. I. O., and talked them around to join. They told me it would be a closed shop, and eventually they would have to do it, and if they didn't join the I. O. E. voluntary and quick, the company would hold that against them, and the first time any little thing, they would be gone, and the best thing they would do would be to join.

Q. Where did you receive any information that the agreement entered into between the I. O. E. and the company would provide for a closed shop?

A. Knowing that it is a company union and the com-

192 pany favored it, I have no doubt of it.

Q. Now, you stated that these other arguments that you advanced were as a result of Mr. Bishop's talk with you.

A. That is right.

Q. Did Mr. Bishop ever make any suggestion that this agreement would be a closed-shop agreement?

A. No, sir; not after I started to work to hold the election. I tried to keep away from Mr. Bishop as much as I possibly could, because I was accused of being a company man and I was looking for a better job, and Bob Elliott turned down a good job, and I was looking for it.

Q. When was ... that Mr. Bishop told you that the company would enter into an agreement with the I. O. E.?

A. When he handed me that thing at that time, it was not known as the I. O. E. It was merely an organization amongst the men.

Q. You mean Board's exhibit No. 13, which you have identified?

A. Yes.

Q. Can you give us that time again, please?

A. Well, it was June—around the first of June.

232 Cross-examination by Mr. WHITE:

Q. And how many men were nominated originally at the nomination balloting?

A. The first was what we called nominating two of the men to go in on the general election from each department.

Q. And you and Mr. Hough were the two?

A. Yes.

Q. Rather a close election, was it not?

A. Well, I don't know. I think there were 18 votes separating us.

Q. How many men voted?

A. 150—somewhere.

Q. A rather close outcome?

A. Somewhere around 150. I don't recall just——

Q. Now, Mr. Ruett, where did that voting take place?

A. Right in front of the car barns.

Q. On company property?

A. No, sir; across the street from it.

Q. Across the street? Was the ballot box over there?

A. That is right. I was told to be specific and sure we don't violate the Wagner Act, because the C. I. O. wanted to invalidate our election.

Q. So you were trying to abide by the National Labor Relations Act, so far as you could?

A. Not the National Labor Act. I was trying to abide by what I was told, to the best of my knowledge, because I
233 didn't read so much of the Wagner Labor Act.

Q. Anyway, you were trying to keep off company property?

A. I was trying to keep off company property; that is right.

Q. Who were the inspectors of election?

A. Well, I don't know, to tell you the truth, who it was. Mr. Hough was with me, and also, as I say, Mr. Beasley and Mr Miller and Mr. King.

Q. You were not all inspectors of election at the election, were you?

A. I don't know. I presume I was about the only inspector, because I stayed there from early in the morning, about eight o'clock, until about seven that night.

Q. Did you count the ballots?

A. Yes, sir.

Q. In the election?

A. Both times.

Q. Both times?

A. The time we—or the nominating, and the other—my son and two others.

Q. You can certify then that it was a fair election?

A. That is according to what was done, the men voted; yes.

Q. And the provisions of the constitution, so far as you know, were carried out in that election?

A. I should judge so, because as I told you, I wasn't familiar myself; I wasn't being paid, or a lawyer, to know
234 exactly what to do, and I carried out what I was told to do by Mr. Taylor.

Q. And, so far as you know, those instructions were carried out at that election?

A. That is right.

235 Q. When was that election held?

A. I think the first nominating was about July 2d, and the other one was about 14 days later, something like that.

261 By M. Moore:

Q. Did it strike you as a very queer thing, if Mr. Bishop was interested in your helping to form an independent union, that he would be giving you a contract with the Amalgamated? Didn't that strike you as a funny thing to do?

A. No; it would not.

Q. How would that help you?

A. It would help to formulate and give you an outline how to draw the agreement. If you read the book, what does that do to you? It gives you an idea of what it is when you go to
262 work on a job; it gives you practical experience. It merely gives you an outline of how to go about forming a union.

Q. What was the date he gave you that?

A. I couldn't exactly say. It was around the 10th of June, or something like that.

Q. The 10th of June?

A. It was around the 10th of June, or something like that. That wouldn't be very much out of the way.

Q. How do you fix that date rather than the 15th of June or the first of June?

A. Because it was before we had the meeting of Mr. Elliott's committee, that is, that time at the company's building on Bush Street.

Q. When was that?

A. That was probably a week or so before the 21st or the 22nd of June.

Q. So that was about the 15th of June, as you recall it?

A. Around then; between the 10th and the 15th. I didn't put down my date. I just didn't put down the date.

Q. Just tell us what were the circumstances under which Mr. Bishop gave you that book.

A. He told me that I could glance over it and it would give me an idea how to go about forming the union. I started out first in this way. I began by organizing the union and all; and then

263 Mr. Elliott steps in. Then it seemed Mr. Elliott lost the confidence of the company for organizing the union or he had his own union, and it didn't harmonize with the wishes of the company. So they had their own union started in Richmond. Then Mr. Bishop called me into the office and thought I would go back to work.

Q. Was the the only thing he did on this occision, that is, give you this book?

A. He gave me the book and said to keep on working, to make successful this organization.

Q. And then you left and thanked him? Is that it?

A. I don't know whether I thanked him or not, but I left.

Q. What did you say? Tell us what you did.

A. I don't remember. Probably if I was polite I thanked him for it, or probably not.

Q. You are usually polite, aren't you?

A. I usually try to be around the barn. I have treated everybody white.

Q. Then you didn't make any use of that paper at all, did you?

A. I did not.

Q. Where did you take it?

A. I took it home.

Q. Did you keep it at home?

A. Yes.

Q. Until when?

264 A. I was supposed to return it to Mr. Bishop but I forgot all about it and I mislaid it. My boy has a desk, and I put it in his desk, and I didn't think about it. As I say, I was

dismissed and I was rooting the whole thing and I came across that.

Q. When was that that you came across it?

A. That was about in November, around then.

268 Q. My question is, Mr. Reutt, did you do anything in the way of forming a committee or going in a group to ask for more wages at that time or at any other time?

A. I did not.

Q. Then there was nothing came of that matter in 1934?

A. Yes. There was a paper passed around and we were told to sign it, that we were satisfied with the conditions existing between the men and the company.

Q. But you did not participate in any way in committee action or in group action at all?

A. I did not.

Q. Did you know of any difficulty that anybody did get into by participating in any group action at that time?

A. Yes; Mr. Charles Dunbar.

Q. Tell us about that? You referred to it yesterday. I just want to know what you knew yourself and not what somebody may have relayed to you that is hearsay, but anything that you may know about it.

A. I know and I have seen the names of perhaps 15 men or more signed to see Mr. Bishop. And afterwards, I mean after they saw Mr. Bishop, it was told around that they were called in there and asked if they joined any union, and that Mr. Dunbar was fired for that purpose. I had Mr. King tell me that from his own mouth. And he said he was the one crucified him or the one that nailed him to the cross.

272 Q. Give us the name of anyone who told you that he knew about that, the cause of Dunbar's discharge.

A. I will give you the names that were called into Mr. Bishop's office.

Q. That is not what I am asking you. I am asking you for the names of any of the employees or any persons that are now living that told you that they knew anything about the cause of Dunbar's discharge.

273 A. I never asked anybody directly whether he knew why this man or the other man was dismissed. I believe it was none of my business; it is bad enough to lose your job.

Mr. MOORE. Of your own knowledge, do you know anything about it?

The WITNESS. I know a lot of men, but whether they will testify to the fact or not——

Trial Examiner FORT. No; it is not that.

The WITNESS. I don't know, because it is hearsay, through the grapevine.

274 By Mr. MOORE:

Q. Do you know of any such man?

A. Well, I do and I don't, for the reason is this, that it has been talked among different men, and a man, if I should name him, he might say he doesn't remember.

Trial Examiner FORT. It should not bother you what he would say. You want to testify to the facts as you know them.

The WITNESS. I don't recall any, then.

By Mr. MOORE:

Q. That was the thing that you say put all this fear into you?

A. I told you it was the fact that Mr. Dunbar was fired, it was known, because of union activities, and because Mr. King said so.

284 Q. So, as you recall it, you talked about the regular things that people would talk about while riding along at first?

A. No; we didn't talk much about anything during the time that he was driving, until he stopped at Twentieth Street, and then he asked me.

285 Q. What did he say?

A. It was involved about the men joining the union, were the men talking about joining the C. I. O. or the A. F. of L.? At that time, I believe the C. I. O. started to work in getting the members.

Q. Had Mr. Crum and Mr. Tomlinson come to Norfolk before that talk you had with Mr. Bishop?

A. I don't know, because I didn't put myself in a way to find out anything about the organization, C. I. O. or any other organization. As I told you, I was working at the time, when my mind was on my work, helping my children with their lessons, and all.

Q. I understand that.

A. And I didn't do anything. I didn't butt in.

Q. Had there been any solicitation, though, by the C. I. O organizers, Crum and Tomlinson, before that? That is what I am trying to find out.

286 A. I answered to you, Mr. Moore, that I don't know. They didn't ask me. I heard from some men that they had some cards lent.

Q. Well, I am talking about the dates now, though.

A. I couldn't say. As far as I am concerned, it was not.

Q. It was not. Well, that is all right. The only thing that was up at that time that you and Mr. Bishop talked on this occasion, which you said was the end of April, yesterday—you testified it was about the end of April or the first of May?

A. It might have been two or three days out of the way, either way. I don't recall.

Q. The only thing that was up then was that there was some unrest among the men about wanting more money; is that right?

A. Yes; and also that other firms were giving more money, and since the Wagner Act was upheld by the Supreme Court, that the men had the right to form unions and organize and ask for more money.

Q. Well, Mr. Bishop said, "Well, if that is what the fellows want to talk about, why don't you get a group together and come in and talk about it?"

A. He didn't start it off that way right first. He told me about the harmful effects that the C. I. O. and A. F. of L. would be to the company and to the men, that the company wouldn't agree to any of them unions, that they had money to
287 fight them, and that the best thing for the men to do was to get amongst themselves and form their own organization and present their claims, and so he asked me—he said, "Why don't you get together and come in and write out what you want and present it to me, and I will take it to Richmond," or, first, he says, "I will take it up to our main office, and then they will take it up to Richmond—shoot it to Richmond right away, and I can say that the company will be glad to work with you men, to the satisfaction of both."

294 Q. Those notices were not signed by anybody, were they?

A. No, sir.

Q. Just that a meeting would be held?

A. That is right.

Q. Do you remember the approximate date in May that that was?

A. I remember it—what I mean, it was the next day after I talked to Mr. Bishop that I had these signs posted.

Q. As near as you can get down to the date, do you remember what it was?

A. It was around the first of June.

Q. The first of June?

A. I think around—or probably the 4th, something like that.

Q. The 4th of June?

A. I don't recall the exact date.

Q. Well, was it around the 4th of June? That is what I am trying to get at.

A. It was somewhere around that. Probably two or three days——

Q. That is all right, sir. Now, those signs had given notice that there was going to be a meeting at the "Y"?

A. That is right.

Q. Was that meeting two or three days later?

A. I think it was three or four days later.

295 Q. Three or four days later?

A. Yes.

Q. That, according to your testimony, puts the meeting at the "Y" around, say, June 8th or 9th, something like that?

A. Approximately.

Q. That is the meeting at which—the day on which there was a meeting in the morning and one in the evening, was it not?

A. It wouldn't be, Mr. Moore. You try to say that it was June. It wasn't in June. The thing happened early in May.

Q. I am asking you. I am trying to find out.

A. You are leading me on to tell things that are not true, and I am trying to answer you to the best of my knowledge exactly what happened. You say June, the first, or approximately——

Q. Suppose we just go back, then, and get it.

A. All right.

Q. Do you want to make some corrections in your testimony?

A. Yes; I want to make a correction in my testimony, that it was around May, not in June.

325 Q. Now, in your testimony yesterday you said that you recalled a statement that Mr. Holtzclaw made at the beginning of the meeting to the effect that you supposed the reason he was present was he was always considered to be a fair man to his men, or something to that effect, didn't you?

A. That is right.

Q. Now, then, the next thing you said, he commented on was, that when he got up in the morning he saw the newspapers full of strikes and several fights it made him feel bad about it. That is the gist of what he said.

A. That is right, the gist of it.

Q. It made everybody feel bad, didn't it?

Mr. Hilton. Mr. Examiner, I object to this line of questioning.

Mr. Moore. The witness was trying to attach great importance to those comments.

Trial Examiner Fort. If "everybody would feel bad," we would all be included in that.

Q. I just wanted to know what there was about his comment that particularly attracted your attention to it. Was there anything unusual about the remark that he was distressed to see the papers so full of strikes and meetings and troubles?

A. Yes. It was for the purpose to make people be afraid of joining the C. I. O. That was my belief. And I believe
326 most of the men, or the employees, that attended, that was their belief also.

347 Q. Now, you were asked a number of questions yester-
348 day about a paper that was marked "Board's exhibit No. 14."

Mr. Hilton. Board's exhibit No. 14 for identification, is it not?

Mr. Moore. Yes; Board's exihibit No. 14 for identification. I have a photostatic copy of it.

By Mr. Moore:

Q. Will you look at that paper, please, sir. That is a photostatic copy of that exhibit (handing document to the witness). Now, you testified yesterday afternoon that it was at a meeting held in the Electric Building on the sixth floor, just after, or, rather, a few days after the meeting of May 24th, that Mr. Elliott distributed applications of that kind among the employees there present, as I understand it.

A. I didn't testify it was following the meeting. I think it was at the second or third meeting there after that, when they came back from Richmond, and met in the Electric Building, the company building, and then it was the second or third meeting that we met. It was not at the first meeting after that. I testified to that.

Q. Well, the first place you met after you came back from the meeting in Richmond on May 24th was in the "Y," was it not?

A. That is correct.

Q. That meeting in the "Y" was some three or four days after you came back from Richmond?

A. Something like that. I don't remember the date.

349 Q. Then, as I understand it, you had a meeting on the sixth floor of the Electric Building?

A. That is right.

Q. And Mr. Elliott spoke at that meeting, did he not?

A. He spoke, I think, and Mr. Nicholson spoke. There were several men got up and spoke.

Q. Well, Mr. Elliott said at the beginning of that meeting in the Electric Building that he understood that it would be perfectly proper for the employees to meet in the company building when they were just discussing the matter in a preliminary way. Do you remember him making that statement?

A. I do not.

Q. You do not remember whether he made it or not?

A. I am not sure.

Q. Now, he had a number of copies of that paper, which is Board's Exhibit No. 14, at the meeting, had he not?

A. He had a whole lot of them.

Q. In the Electric Building?

A. Yes, sir.

Q. You fixed that yesterday as June 10th or 14th. Have you any desire, in the light of what was said this morning, to modify that at all, or do you still think that that is the date?

A. I didn't specify exactly the date. I said it was approxi-
mately at that time. It may be three or four days out
350 of the way, because I don't remember the date. As I said,
I didn't keep no record of it. I only wish I did, but——

Q. Did Mr. Elliott have at that time any other papers in connection with the organization that he was proposing to have set up, except that one paper?

A. No; he had also a small card, I think.

Q. Did he have a constitution and bylaws separate from that paper?

A. No; this was the only paper to that effect.

Q. Except that there wa a little signature card?

A. Except that there was a little signature card—except that.

Q. And that paper, as you understood it, was the constitution and bylaws, so far as he had any; is that right?

A. That is what his idea was.

Q. Now, did he say at that meeting that he had gotten a lawyer to help prepare it?

A. I think so; yes, sir.

Q. Did he say who that lawyer was?

A. He did not. That is, I don't remember. I don't recall whether he did or not. He may have mentioned someone.

Q. You knew he was getting legal advice, though, did you not?

A. I didn't know, except what he told me. That is the statement that he made at the meeting.

351 Q. Now, that paper provoked quite a hot discussion, did it not?

A. Yes, sir.

Q. Did it not produce two factions in the meeting the first time that that paper was brought out and discussed?

A. That is right.

Q. Who was on one side and who was on the other side of those factions?

A. Well, from my best remembrance, at Cove Street and Reeves Avenue—that is the representatives there that were opposed to it, and the transportation, we were for it, that is, to give it a trial. I wouldn't say for it, but merely to see what we could do with it.

Q. Do you remember who the representatives were from Cove Street and Reeves Avenue who did oppose it?

A. One man's name was Brown, and I think Mr. McHarney. He also opposed it. I don't remember whether Mr. Tatum did or not, but he was—well, I don't know whether he did or not, but I distinctly remember these two men, Brown and McHarney.

Q. Who was made chairman of the meeting?

A. Mr. Tatum. At that time Mr. Nicholson was chairman.

Q. He was just temporary chairman?

A. Yes.

Q. And then Mr. Tatum was elected permanent chairman
352 of that group?

A. I think it was still known as temporary until this election was coming off.

Q. Anyway, Mr. Nicholson just called the group together and started it off?

A. That is right.

Q. And then there was a regular chairman elected for the meeting for a definite time?

A. Yes.

Q. And Mr. Tatum was elected for that job?

A. That is right.

Q. Mr. Elliott had acted as chairman of the meeting over at the "Y" a few days before that?

A. That is right.

Q. Now, who were the other representatives that opposed the Elliott plan at this meeting around June 14th or 15th?

A. I don't know their names.

Q. Well, at any rate, there immediately developed two very sharp factions; the transportation men were inclined to give it a trial—to give Mr. Elliott's proposition a trial there?

A. That is right.

Q. And the light and power men were opposed to it?

A. That is right.

Q. Now, why were they opposed to it, as they expressed themselves? What was it that they did not like?

353 A. Well, I don't recall—what I mean—who and what. Each man had a different idea. One of the features was that Mr. Elliott proposed that there should be a director, one with a paid salary, to run the union; that is, to run the organization.

Q. That is the organization that he was proposing?

A. I don't know whether at that time it was his. I think it was meant for everybody, for the employees.

370 Q. Just what did Twiford tell you about that, as nearly as you can quote him?

A. Twiford said Edwards told him he had better get out of the C. I. O.

Q. Had better get out of what?

A. Had better get out of the C. I. O.

Q. Is that all he told him?

A. And that if he did not the company was going to dismiss the man.

371 Q. Did you relate those two stories to Mr. Edwards when you spoke to him about it in July?

A. I don't think I did about that. I merely told him to stop talking so much to other men.

Q. What did he say to you when you said to him about it?

A. I think he said all right. He said he didn't say much, but he said he would do it.

Q. After that bulletin of June 24th when Mr. Holtzclaw had again assured you and all of the other men that they were perfectly free to do as they saw fit in this matter, you were very active after that, up until this election, weren't you?

A. I was active for the simple reason Mr. Holtzclaw emphasized the employees should go together before they would get their money, that is, more money.

Q. He did not promise you absolutely any increase, did he?

A. He did. And you heard him, Mr. Moore, too.

Q. He said if there was any increase or any adjustment it would date from June 1st?

A. Yes.

372 Q. Do you undertake to say he made any promise of any increase at all?

A. If he didn't have no idea of increasing it he wouldn't say that, that it would go into effect then.

Q. It is just a conclusion on your part, isn't it. What he said was that if there was any adjustment of wages it would date from June 1st?

A. That is right. And he also said that the employees would get it if they got together and organized.

421 *Offer of motion to amend complaint*

Mr. Hilton. Mr. Examiner, at this time I would like to file a formal motion to amend paragraph 8 of this complaint filed herein, and to add to the complaint a new paragraph known as

paragraph 8a. I have given counsel for the respondent and counsel for the intervening union a copy of the motion to amend and also the amended charge.

This amended charge adds two additional discharged employees to those mentioned in the complaint, and for the
422 purpose of the record I would like to have the motion to amend marked for identification as "Board's Exhibit No. 15."

(The document above referred to was marked "Board's Exhibit No. 15" for identification.)

Trial Examiner FORT. On what is this predicated?

Mr. HILTON. Sir?

Trial Examiner FORT. I say, on what is this motion to amend predicated?

Mr. HILTON. In other words, we have these two employees. They will be witnesses in the case——

Trial Examiner FORT. Is there anything in the charge on which this could be based?

Mr. HILTON. We have an amended charge which we are filing to cover these two employees at this time.

Trial Examiner FORT. Whose amended charge?

Mr. HILTON. The amended charge was filed by the Amalgamated Association of Street, Electric Railway and Motor Coach Employees.

Trial Examiner FORT. As I understand it, the proposed amended charge merely adds these two discharged persons?

Mr. HILTON. That is correct. It adds these two additional employees to the complaint.

Trial Examiner FORT. When was that filed?

Mr. HILTON. Just now.

Trial Examiner FORT. It has just now been filed?

423 Mr. HILTON. Just now.

Trial Examiner FORT. What does counsel for the respondent have to say?

Mr. MOORE. May it please the Examiner, it is now 4:15 p. m. on this 20th day of the month. We have just had handed to us, about two minutes ago, an amended charge and also a motion to amend.

We object to the filing of the amended charge, and we also object to the allowance of the motion, because we think this particular thing is not an amendment of form, but a real new case that is proposed here.

If this sort of thing could be done, obviously a charge could be filed, including the name of one——

Trial Examiner FORT. I agree with you fully, that it is subject to that motion, but not to the amendment of it. I can see

how you may object to proceeding under that part of the charge at this time; but the right to amend, I think, would be present on the part of the Board.

Mr. MOORE. It is a statement of a new case. That is what it amounts to.

Trial Examiner FORT. I say, I do not think we should be asked to proceed with that part of the case at this time.

Mr. MOORE. No. I would have no objection particularly to evidence that might be offered in respect of the discontinuance of the services of these two particular individuals,
424 in so far as there might be some connection with the general charge that is in the present complaint, where it is charged that the company sponsored and dominated this union. That might be a fragment of evidence that there might be additional bearing on that general charge that is in the complaint; but you can see that what is in the minds of these gentlemen is to lay a basis for more, much more than that. I presume what they have in mind is to try to lay the basis for some sort of request later on to get reinstatement for those two men.

Trial Examiner FORT. Well, if you are charged with having illegally terminated their services, I think it goes without further saying that he would have to show that in order to find affirmative relief. I think your point is well taken, as far as these two employees are concerned. It is a new case, and you would be entitled to the ordinary five days' notice. So we will not receive any evidence with relation to them for a period of not less than five days from date. I will accept the amendment to the petition, and that will permit no evidence relating to the discharge for the purpose of granting them affirmative relief until the period of five days shall elapse. Then, at that time, we can either proceed with that, if the case is not disposed of, or if there is some agreement to obviate the necessity of repeating all of this testimony up to now, so as to have it apply to them, well and good. Otherwise, we will have to make a petition
425 showing in that particular case, separately from the present record.

Mr. MOORE. I wish the record to make clear that we were just furnished, a few moments ago, with an unsigned carbon copy of this paper. It has not been served. We do not recognize that as service in any way, and we object to any proceeding whatever on those two matters, in connection with this case.

Trial Examiner FORT. I think clearly the service, right here in open court and in the presence of the Examiner, would be competent service.

Mr. MOORE. I just wanted to make clear that we do not waive any point.

Trial Examiner FORT. Yes; but I think that is competent service, if, in the progress of the case, a copy of the proposed amendment is given to the several parties. That is sufficient service.

Mr. MOORE. If this sort of thing were to be done, for all we know, at the end of five days, there may be some other people come in, and you might have an interminable sort of proceeding. We are here trying to try a certain specific case.

Trial Examiner FORT. I hold with you that so far as these two employees are concerned, it is a new case. I will not per-
426 mit any evidence along that line for the purpose of showing any affirmative relief until after five days from now, or until the next five days shall expire. At the end of that time, if the parties would prefer not to use the present record as a basis, coupled with this evidence, it may be offered with regard to them later. Then, of course, we can go ahead with a new proceeding; but I will permit the amendment at this time, without limitation, that there shall be no affirmative action on the amendment, and no part of the hearing shall apply to that amendment prior to the expiration of the necessary five days' notice.

448 ROBERT E. ELLIOTT, JR., a witness called by and on behalf of the National Labor Relations Board, being duly sworn, was examined and testified as follows:

Direct examination by Mr. SPENCER:

Q. What is your full name?

A. Robert E. Elliott, Jr.

Q. What is your address?

A. 1442 Westover Avenue, Norfolk.

Q. Mr. Elliott, have you ever been an employee of the V. E. P. Company?

A. I have.

Q. When did your employment with that company first start?

A. In the summer of 1930.

Q. In what capacity were you employed by that company in 1930?

A. As a bus operator.

Q. How long did that employment last at that time?

A. For three months.

Q. And then were you ever employed by the V. E. P. Co. after that?

449 A. I was.

Q. When were you employed again by the V. E. P. Co.?

A. In 1931. It was either 1931 or 1932.

Q. In what capacity were you employed at that time?

A. As a bus operator.

Q. How long did that employment last?

A. Just for a short while—for a month or two.

Q. What was the reason for the termination of your employment then?

A. I went into business with my father.

Q. Were you ever employed by the V. E. P. Co. subsequent to that date?

A. I was.

Q. When was that?

A. 1934.

Q. In what capacity were you employed then?

A. As a bus operator.

Q. How long did you work for the company then?

A. From 1934 until November 1937.

450 Q. During your employment with the V. E. & P. Company when was the first time that you ever heard of any labor activity among the employees?

A. The first time that I heard of any labor activity among the employees was in the cast of Charlie Dunbar.

Q. Will you state just what that was?

A. Charlie Dunbar was employed as a bus operator, or a car operator, I forget which now, and he was working on an extra bus at the time. I think it was 1934 or 1935; I do not recall. It was just a short time after I had gone back to work. He started working soon after I did, the last time.

Several weeks later he approached me and asked me if I would attend a meeting for the purpose of organizing a union. Since this first talk I had with Charlie along these lines a
451 lot of things turned over in my mind, and I thought that perhaps he was a spy for the company; so when he asked me to attend this union meeting I refused.

Whether a meeting was held I do not know definitely, but I heard from quite a number of people that a union meeting, or a meeting of some kind, was held, and Charlie Dunbar was more or less a leader. About 10 or 12, possibly 15, bus operators and street car men attended this meeting. The next morning these 10 or 15 men were signed up to see Mr. Bishop.

Q. Now, when you say "signed up to see Mr. Bishop," that means that they were to go to Mr. Bishop's office?

A. That is right. Three days later—it might have been the next day, or the second day, or the third day, but Charlie Dunbar was dismissed. As to whether that was the reason for Charlie's dismissal I can not say definitely. I do know that several of the men who were friendly and close to Mr. Bishop told me that Charlie was discharged because he tried to start a union. Charlie Dunbar himself made that statement.

454 Q. Mr. Elliott, what was the next thing you heard with regard to the activities of the Virginia Electric and Power Company?

A. The next thing I heard was this. Well, I saw a sign posed in the cashier's cage in the dispatcher's office announcing a meeting of the Transportation employees of streetcar and bus operators in the company's Y. M. C. A. above the dispatcher's office at a later date.

Q. Do you recall that date?

A. The notice was posted during the first week in May 1937. I think the meeting was called for the second week in May 1937.

Q. You say the second week in May?

A. Yes.

Q. Did you attend that meeting?

A. I did.

Q. Did you see anyone else who notified you to attend this meeting?

455 A. I did. I was at Dr. Saunders' office, who was the company's doctor. He has an office in the Taylor Building on Granby Street. I was waiting outside for my turn to see the Doctor, and Mr. Neal, who I think was assistant to Mr. Bishop in the Transportation Department, came up to a small group that was outside to which he started talking. During the conversation someone brought up the subject of this notice that was posted on the cashier's cage, and Mr. Neal said he didn't know what it was all about, but that he thought it was going to be something important and for all of us to attend.

Q. Did he attend the meeting?

A. I did.

Q. Will you state just what took place at the meeting, the time it was held, and the place?

A. The morning meeting was held around ten or eleven o'clock and the afternoon meeting was held, I think, at 4:30 o'clock, around May 11th.

Q. That was around May 11th?

A. Yes.

Q. Will you please proceed?

A. Before the meeting was called I had heard a lot of rumors about the meeting and I had heard the company was going to try to get the men together at this particular time to get them, that is, to get the men, to sign a petition stating that they were

456 satisfied with the wages and working conditions, similar to the petition that Rudolph Price had circulated previous to that. I tried to find out who was calling the meeting so that I would know something about it. Naturally, being an

employee of the company, I was interested, and particularly at that time as the National Labor Relations Act had been passed and evidently the employees had a legitimate reason or right to organize, and I was interested in what was going to go on at this meeting.

I could not find out who called the meeting or for what definite purpose it was called except that I thought perhaps the company might try to circulate another petition.

Q. What did you do?

A. There is one other point I would like to bring out.

Q. Proceed, please.

A. Before the meeting was called I wrote a letter to Representative Norman O. Hamilton and asked him for a copy of the National Labor Relations Act.

Q. I believe you stated you wrote this letter of Mr. Hamilton?

A. Yes.

Q. Who is Mr. Hamilton?

A. He is the representative from this District to the United States House of Representatives in Washington.

Q. A congressman?

A. Yes.

Q. Proceed, Please?

A. I think it was one day after I wrote the letter that I
457 got a reply and a copy of the National Labor Relations Act, which I read over very carefully. And my wife and I drew up a petition which I had in mind to present at this coming meeting in the event somebody got up and presented another petition similar to the one Rudolph Price had circulated.

Q. You attended the meeting, didn't you?

A. Yes; that is right. When the morning meeting was called there was no one for possibly ten minutes, that is, there was no one who seemed to want to take the initiative to start the meeting. I did not know that Mr. Reutt had anything to do with the meeting at all. So I think about a quarter past eleven or twenty minutes past eleven when there was quite a bit of agitation or stir among the people——

Q. Just tell us what took place when you got to the meeting?

A. About twenty minutes after 11 o'clock Mr. Reutt got up and started the meeting. So after he had talked possibly three or four minutes and explained the purpose of the meeting, that it was to ask for better wages and better working conditions, I asked to read this petition.

Of course, I realized this petition was right in line with the purpose of the meeting. So instead of reading the petition first I read a portion of the National Labor Relations Act and then

I read the petition asking for a raise in pay and certain working conditions which would be better than the working conditions at that time. And I think about 75 or 80 percent
458 of the men at that meeting signed that petition at that meeting.

Q. Mr. Reutt, I show you a photostatic copy of Board's Exhibit No. 12 and ask you if that is a photostatic copy of the petition?

A. It is.

Q. What did you do with the petition after you got the signatures attached?

A. There was another meeting held that afternoon and additional signatures were secured for the petition, and then it was decided at both meetings that due to the fact a lot of employees did not have an opportunity to come to the meeting that someone should take the petition down to the dispatcher's office and get the rest of the employees to sign up. So I did that for a day and a half. Then the petition was presented to Mr. Bishop.

Q. Was there any other business aside from your getting the names attached to this petition carried on at either the first or the second meeting?

A. Yes.

Q. What else took place?

A. There was a committee elected to present this petition to Mr. Bishop.

Q. Can you tell the names of the committeemen who were elected that morning and afternoon?

A. Mr. Reutt, M. D. Slaughter, M. F. Tehan and myself.
459 I don't recall who the others were.

Q. What was the purpose or the duties of this committee?

A. To present this petition to Mr. Bishop after we had a majority of the employees in the Transportation Department signed on this petition. That is, by the Transportation Department, I mean the street car and bus operators.

Q. Can you tell me what date it was? Can you tell me the date on which you presented the petition to Mr. Bishop?

A. I think it was the second day after the meeting. It was around the 13th of May.

Q. Who were present? Was the entire committee present?

A. All except Mr. Reutt, I think.

460 Q. How did the committee come to meet in Mr. Bishop's office?

A. Mr. Bishop invited us to meet in there.

Q. Will you please state what was discussed at that meeting?

A. There was some little discussion about the petition. Mr. Bishop said he had given it, I think, to Mr. Carroll or possibly Mr. Throckmorton here at Norfolk and, naturally, it took some time on a matter like that before we could get an answer.

Then he started making suggestions to the committee about how to form an independent organization. He told us that if we would select our own lawyer and set up some bylaws
461 and a constitution and collect ten or fifteen or 25 cents a month dues that we would not need any outside organization and that we could accomplish more with the company in that way then if we joined any outside organization.

Q. Was that all that was discussed at that time?

A. No, sir.

Q. What else was discussed?

A. He went into some detail about how much money could be collected if we would take in, in any proposed organization such as he suggested, all of the employees of the Virginia Electric and Power Company, that our monthly dues would be around $700 or $800 a month. I think he was figuring that on the basis of 25 cents a month. The meeting lasted approximately an hour and a half, in which he even suggested several lawyers for us to go to see.

Q. How did he make that suggestion as to the lawyers that you should see?

A. As we were going out of his office Mr. Bishop called me back and handed me a little yellow slip of paper on which was written the names of several local attorneys.

Q. Mr. Elliott, I show you a slip of paper and ask you to identify that, if you can?

A. That is the slip of paper that Mr. Bishop handed to me.

Mr. SPENCER. I would like to offer this in evidence as Board's Exhibit No. 16, Mr. Examiner.

462 Trial Examiner FORT. There being no objection, it will be admitted as Board's Exhibit No. 16.

(The document above referred to was received in evidence and marked "Board's Exhibit No. 16.")

463 By Mr. SPENCER:

Q. Mr. Elliott, going back for just a moment to the petition which you presented to the men, and showing you a photostatic copy of Board's exhibit No. 12, when you presented this petition were the scratch marks here and the only visible name, that is, the City of Norfolk? Is that right?

A. That is right.

Q. The other was scratched out at that time?

A. That is right. I might also add that at this first meeting it was decided by a vote that should this committee fail to accomplish any results, that we would take steps to join the C. I. O. or the American Federation of Labor as a group.

Q. When did you have your next meeting, the meeting of your committee, Mr. Elliott?

A. Several days later.

Q. Where was that meeting held?

A. In Mr. Bishop's office, again.

Q. At whose suggestion of invitation were you called into Mr. Bishop's office?

A. Mr. Bishop's.

Q. Will you tell us what transpired at that meeting?

A. Another discussion was entered into about a proposed independent system-wide union. Mr. Bishop suggested practically the same thing that he suggested previous to this.

464 He also told us that there was going to be a meeting in Richmond and in Norfolk, called by Mr. Holtzclaw and one of the officials here in Norfolk, to be attended by representatives of each department, and he suggested that we send representatives to this meeting in Norfolk.

Q. Acting on this information, what did your committee do in regard to sending a representative to this meeting?

A. Mr. Hough—M. D. Hough—a streetcar operator and myself—Oh, and Mr. Reutt, I think, went to Richmond to hear Mr. Holtzclaw.

Q. Will you state now—I believe it is already in the record as to where the meeing was held—will you state what transpired at that meeting?

A. I think Mr. Holtzclaw opened the meeting. He made the remark about how he had to be careful in a meeting such as this about what he said, because someone might use what he said against him later. He said that he had lately been picking up the newspapers every morning and seeing accounts of strikes and disorder and trouble all over the United States, and that he wanted the men, in view of these accounts in the newspapers and in view of the reason of the recent decision of the Supreme Court on the National Labor Act—he wanted the men to know how the company felt about organizing and union activities. He then read a prepared statement, in which he suggested that the men organize an independent organization.

465 Q. Pardon me just a moment, Mr. Elliott. When you speak of a prepared statement, I show you Board's exhibit No. 4, and ask you if this is the statement that he read (handing the exhibit to the witness).

A. It is.

Q. Excuse me, Mr. Elliott. Will you now continue?

A. After he read this prepared statement, he said that the company was willing to go along with the employees on an organization basis; in fact, they were planning to give a wage increase to the men, and that if the men would organize in some method whereby it would eliminate a lot of chaos between the employees of the company, that the company would give the men the proposed rate, and they would date it back to June 1st. He said it would be retroactive to June 1, 1937, but he was very specific to state that the men would not get the raise until after they had organized.

Q. Did anyone else talk at this meeting?

A. Mr. Moore, the attorney for the V. E. P. Co., and Mr. Smith, I think—someone who was ex-official of the company.

Q. I believe it has been testified to that——

Mr. MOORE. No; do not lead him on this. Let the witness testify.

The WITNESS. I think that is the man's name. I am not positive of it. I know that it was stated that he had been an official of the company.

466 By Mr. SPENCER:

Q. Well, did this person, whose name you do not recall, speak before or after Mr. Holtzclaw?

A. After Mr. Holtzclaw.

Q. And can you state what he had to say, to the best of your recollection?

A. He made a remark that he was glad that he was out of the battle, that he was glad that someone else, as he said, looking at Mr. Holtzclaw—there was someone else who had to fight them and carry on; he was glad that he was out of it.

Q. Now, after this gentleman whose name you do not recall talked, what happened then in this meeting?

A. There was some discussion between Mr. Holtzclaw and Mr. Moore and the representatives at the meeting. One colored employee, I think, from one of the electrical divisions, made a statement that he had been with the company a long time, and needed some more money and didn't know exactly how to go about getting it, but that the price of herrings was more today than it had ever been before, and he was not getting any more money. I think that brought a laugh from everybody in the meeting.

Q. Did you stay until the meeting was over?

A. I did. Before the meeting was called together, or before any discussion took place, everyone there was called to identify himself.

467 Q. What do you mean by "called on to identify himself"? What method did they use?

A. They started right at the first line, first row of chairs, and went right down the line, and everybody had to rise and state his name and department in the company.

Q. After Mr. Holtzclaw's speech and the unidentified man's speech what did they do—Mr. Holtzclaw, Mr. Jones, and the unidentified man?

A. Well, shortly after that the meeting broke up and they left.

Q. After they left did you see any of the people present remain in the hall?

A. I remained for possibly five minutes.

Q. Do you know whether or not the ones remaining held any kind of meeting?

A. I think they did; yes, sir.

Q. Did you participate in that meeting?

A. No, sir; I did not.

Q. Did you hear afterwards what took place at the meeting?

A. I heard that there were plans on foot to start an independent union, so we could hurry up and get this raise.

Q. After you left the meeting what did you do then?

A. We came back to Norfolk.

Q. Now, after the meeting in Richmond did you talk to any of the employees who were present and heard Mr. Holtz-
468 claw and Mr. Jones and the other gentleman's talks?

A. I talked to quite a few at the entrance of the V. E. P. Building.

Q. Among the employees that you talked to what was the thought among all the employees in regard to this meeting and talks that you heard?

A. There was quite a number there who said that if we wanted to get a raise that we better not join the C. I. O. or the A. F. of L.; that Mr. Holtzclaw had made statements which we could read between the lines and said that he wanted us to form a company union, and that they wanted to get this thing over as quickly as possible so we could get this raise that was anticipated on June 1st.

Q. Now, on the way back from Richmond to Norfolk did you gentlemen discuss the speeches made by Mr. Holtzclaw?

A. Quite a bit; yes, sir.

Q. And what did you decide to do about it down here in Norfolk in the transportation division?

A. Mr. Holtzclaw had made it very clear that he wanted a system-wide organization; that if there was going to be collective bargaining, that he was too busy to be bothered with small

groups of men coming up to him to negotiate contracts, and he wanted the whole thing done at one time. So on our trip back to Norfolk we discussed this very extensively.

469 Mr. Ruett and Mr. Hough were of the opinion that we should take steps along with all of the employees to form a system-wide organization; but I was of the opinion that we should see what was going to happen to this petition before we took any steps to do anything.

Q. And this petition you are speaking of now is Board's Exhibit 12, the one that you had gotten the signature to in the meeting of May 11th?

A. Yes, sir.

470 Q. Now, the meeting on the 26th, was Mr. Bishop present at that meeting?

A. He was; yes, sir.

Q. Will you state what took place at that meeting?

A. We discussed what Mr. Holtzclaw and Mr. Moore had talked about in the meeting in Richmond. Mr. Bishop suggested again, the third time, that we form—have something to do with a system-wide organization, and he even suggested collecting 25 cents a month dues.

While we held this meeting this time in Mr. Bishop's office, it was just before a meeting to be held of all employees; in other words, I think this meeting was held 10 o'clock in Mr. Bishop's office, and at 1 o'clock we had a meeting scheduled at the Y. M. C. A. for all employees.

Q. 10 o'clock a. m. or p. m.?

A. A. m.

Q. And 11 o'clock a. m. of the same day?

A. The same day.

Q. Well, was anything said in regard to the committee? Was any mention made about the committee at that meeting?

A. It was suggested by Mr. Bishop that we should re-

471 duce the committee from 6 to 4.

Q. Was there any reason given by Mr. Bishop as to why the committee should be reduced?

A. He said that there was no need to have 6, because they could not get together as easily as if we had 4.

Q. Well, what did the committee do in regard to that?

A. It was decided by that committee and Mr. Bishop in the meeting that we—at this proposed meeting of all employees in the transportation department, that we would suggest a reduction in the committee.

Q. Now, this was at 10 o'clock a. m.?

A. Yes, sir.

Q. At 11 o'clock a. m. of the same day did you have the meeting that you just spoke of?

A. We did.

Q. Where was it held?

A. It was held in the company's Y. M. C. A. on 18th Street.

Q. And what happened at that meeting?

A. I might also say that Mr. Bishop made a statement in this committee meeting that he did not think the company was going to act on that petition; that Mr. Holtzclaw had had quite a number of similar petitions coming to him; that Mr. Holtzclaw was too busy to be bothered with a whole lot of petitions and requests from different departments; so that we had to take
472 some steps to organize if we wanted any representative and collective bargaining; so we conveyed this to the members at the meeting—to the employees.

Q. That was at 11 o'clock; is that right?

A. Yes. So it was decided that we reduce the committee to 4 and take some steps to organize. It was decided then that we would have an organization for the transportation employees alone for 30 days; that we would try to give this new committee 30 days in which to see what they can accomplish, and if at the end of the 30 days this committee had not accomplished anything favorable to the men, we would meet again and take a vote specifically to decide whether we should join the C. I. O. or the American Federation of Labor.

473 Q. Mr. Elliott, just before the recess I believe you said Mr. Bishop and you were discussing the meeting.

A. Yes.

Q. At which meeting the committee was reduced from six to four?

A. Yes, sir.

Q. Can you state the names of the four committeemen who were elected to take the place of the six?

A. Mr. Hough, Mr. Reutt, Mr. J. D. King, and myself.

Q. Were you ever asked by anyone to go to any of the other places where they are served by the Virginia Electric and Power Company to discuss this plan with the employees of the Virginia Electric and Power Company?

A. I was.

Q. Who asked you to go and where were you told to go, Mr. Elliott?

A. Mr. Bishop asked me to go to Portsmouth and talk to the transportation employees over there and to take a copy, and he gave me a copy of Mr. Holtzclaw's speech that Mr. Holtzclaw had made in Richmond. He told me he didn't have but one or two copies of it, but for me to take it over there and read

it to the employees at Portsmouth, but not to tell anyone that he had given me that paper. So I went to Portsmouth
474 and talked to the employees over there.

Q. Do you recall about the time that you had this meeting at Portsmouth?

A. I think it was about the third week in May.

Q. After the new committee was elected, that is, after the committee of four which you have just named was elected, when was the first meeting that you held after you were elected? When and where?

A. It was about three or four days later. It was in the "Y" on 18th Street.

Q. And when you say the "Y," is that the "Y" operated by the City of Norfolk?

A. By the V. E. & P.

Q. Who were present at that meeting?

A. Quite a number of street car and bus drivers.

Q. What was the purpose of having this meeting? What business was discussed?

A. The purpose of this meeting was to install a thirty-day organization, to have something that we would be able to show the management of the company, something definite that we did have an organization.

Q. What physical evidence did you prepare to show to the company?

A. The committee had met a day or two before this and had given me the power to have some papers printed, some application blanks and also some membership cards. I had
475 these printed down at Eugene Graves down on Tazwell Street.

Q. What did you do with the application cards after you had had them printed?

A. At this meeting it was decided that all of the members would pay a dollar for thirty days. At that particular time it was decided for thirty days to give the committee something to work on so that they could have expense money to meet with the management of the company.

Q. I show you Board's exhibit #14 and ask you if this is a similar copy.

A. Yes.

481 Q. After you came back from Richmond, did you report to Mr. Bishop about your conference with Mr. Holtzclaw?

A. Sure. I got back from Richmond about 3 o'clock—3 or 4 o'clock, and there was a game of soft ball scheduled between the Y. M. C. A. team and the transportation team in Norfolk,

and I played the game of soft ball that afternoon. About 6:30 o'clock I came into the Y. M. C. A., and the dispatcher there had a note from Mr. Bishop for me to call Mr. Bishop. So I called Mr. Bishop on the telephone, and he asked me if I cared to meet him somewhere where nobody would see us. So I had no idea what he wanted. So I told him I just finished playing soft ball; I was ready to take a shower, and I was going home for supper. So he asked me where I lived, and I told him.

He says, "I will come around to your house." I didn't live to very far from the car barns. So I made an appointment for 7 o'clock for him to come to my house. So I had been home only about three or four minutes when Mr. Bishop came up the street and he stopped in front of my house.

Q. Will you state what was said there on that occasion?

482 A. Mr. Bishop asked how the soft ball game came out. I told him. He talked very cordially for about five minutes, and then finally he made this statement—he said, "150 men have come to me in the last two or three days and told me that they want to hook up with this system-wide organization."

He said, "Why don't you forget this transportation organization that is trying to be formed around here, and see what the men want to do." So I questioned him as to whether 150 men had talked to him, because we had just held a meeting a few days previous to that. He said that he knew definitely that 150 men had requested him to ask me to swing the thing into the company union or the I. O. E., or the system-wide union.

So I didn't commit myself at all. A few minutes later, after we had been talking, he said, "Now, look, if you will swing the men into the company union or into this system-wide union, I am going to have a good job come open in a few months." He said, "If you will play ball with the company, I will see that you get that job." This was the same day that I talked to Mr. Holtzclaw, and Mr. Holtzclaw had talked to me about that I could handle a better job, and I thought the thing was really coming right down from Holtzclaw to Mr. Bishop, and then Mr. Bishop came over to my house and offered me a better job, and I refused. I told him if I had to get a better job that way, I didn't want it.

483 Q. Now, when was the net time you saw Mr. Bishop, if at all, in regard to your union activity?

A. About two days later, he called up the dispatcher's office again and told the dispatcher to tell me to call him when I got off work.

Q. This would put it about——

A. Thursday.

Q. Thursday, and in what part of the month?

A. The latter part of the month.

Q. The meeting, I believe you testified to a moment ago, was the meeting of the 27th, and this was two days later?

A. So I called Mr. Bishop——

Mr. MOORE. What was that date?

Mr. SPENCER. I think it was the 29th. He just testified about the 27th——

Mr. MOORE. May 27th?

Mr. SPENCER. Yes; that would make it around the 29th.

The WITNESS. Around the 29th.

Mr. MOORE. Of May?

The WITNESS. Yes.

Mr. MOORE. Just after your meeting with Mr. Holtzclaw?

The WITNESS. Yes; that is right. Mr. Bishop asked me to come over to his house, over to his house. So I went over to Mr. Bishop's house. He had company in the front part, and his wife was
484 in the front room. So he invited me on the back porch.

So we sat on the back steps for about an hour there, and he discussed at some length the activities of the company, and told me that the company had recently sent $5,000,000 to Texas and bought up a defunct utility company down there, and that this company had an enormous surplus of money, and he didn't understand what the inner workings of the company were, but they had a lot of money, and that they could fight organizations, and that they would fight organizations.

He said, "This company usually gets what it wants."

So we were discussing the activities of the company at random, more or less, and there was some discussion about Mr. Carroll and Henry Miller of the transportation department, who, I think, are over Mr. Bishop in the transportation department, and Mr. Bishop made this remark: "If those damn fellows down town would leave me alone and let me run the transportation end of it," that he could keep the men under his thumb, like he always had, that they had come here and upset things, and tried to run things over his head.

I didn't pay much attention to that, except that I remember if, and then he got up and went in in his house to his desk, and got me a book, a little booklet, written by John D. Rockefeller. He brought it back to me and told me to take it home and read it and digest it, that it was a plan for forming an independent company union, and that when I would read it and
485 study it thoroughly, that he would see to it that if there

was a company union formed or an independent union formed, that I would be made chairman of it, if I would play ball with the company.

By Mr. SPENCER:

Q. Mr. Elliott, I show you a booklet, and ask you if you can identify this document (handing the document to the witness)?

A. That is the pamphlet Mr. Bishop gave me.

Mr. SPENCER. Mr. Examiner, I now offer this as Board's Exhibit No. 17 (handing the document to counsel for respondent.)

Trial Examiner FORT. There being no objection, it will be received.

(The booklet referred to was marked "Board's Exhibit No. 17" and was received in evidence.)

By Mr. SPENCER:

Q. Will you continue now, Mr. Elliott?

A. So I left and went home shortly after that. I don't think Mr. Bishop was entirely satisfied with my attitude, except the following day or the following night, I was over to the car barns—no; it was several nights after this—there was a supervisor by the name of Edwards. At that time, there were two restaurants right at the car barn, one across the street, and one right opposite the car barn, and naturally there was quite a bit of activity on the part of the union at that time, and a lot of discussions
486 took place in the restaurants. So I saw a crowd congregated in one of the restaurants, and I went in. I had been in there about two minutes when I noticed Inspector Edwards come in there and he sat down besides me. He was about half drunk, and he had his uniform, his inspector's uniform on. In a very obnoxious voice he made the statement that I and several others were going to put him in the penitentiary. He said that we were trying to put Mr. Bishop and Mr. Edwards in the penitentiary. So I left. I went across the street to the other restaurant, and he followed me over there, and I think I made about six trips back and forth trying to get rid of him, and he followed me just like a dog.

So finally a policeman came up and asked me why didn't I hit the fellow. He said, "That man is getting in my hair." So I made the remark, "If that is all you want me to do, to hit him, so that they could fire me for hitting an inspector while he is in his uniform." So the policeman seemed to be quite a bit upset because I wouldn't hit him. I wanted to. Anyway, I didn't. So he kept raving, just like a maniac, that Mr. Bishop and Mr. Edwards were going to be put in jail because of this union activity.

487 Q. After this when was the next time you attended any union meeting at any time?

A. In the auditorium of the V. E. P. Building on Boush Street.

Q. How did you get a notice of this meeting?

A. Mr. Diggs sent me a notice, a personal invitation, to be up to this meeting.

Q. Now, what department does Mr. Diggs work in?

A. I think he works either in the gas department or the electrical department.

Q. I show you a slip of paper and ask you if that is the notice you received from Mr. Diggs.

A. It is.

(Mr. Spencer showed the paper to Mr. Moore and to Mr. White.)

Mr. SPENCER. Now, I wish to offer this as Board's exhibit No. 18.

Trial Examiner FORT. There being no objection, it will be received.

(Thereupon the document above referred to was marked "Board's Exhibit No. 18" and was received in evidence.)

Mr. MOORE. Excuse me. To save time, will you ask him what the date of that meeting is?

Mr. SPENCER. Yes; I will try to establish that.

488 By Mr. SPENCER:

Q. What date, to the best of your recollection, was this meeting held, Mr. Elliott?

A. Around the first of June, the first part of June, or it might have been the latter part of May; it was right around that time.

Q. What type of employees attended this meeting?

A. Supposedly representatives from every department in the Norfolk division of the company.

Q. Do you know what Mr. Diggs' initials are; who wrote you this notice of this meeting?

A. No, I do not; but I do know that he had been elected temporary secretary of the proposed system-wide organization. He was temporary secretary in the Norfolk division in this systematized union.

Q. Do you know whether or not the Mr. Diggs that you referred to is an eligible employee considered so by the company to belong to the I. O. E.?

A. I don't know. I have heard that he had to later resign because he was employed in a semiofficial capacity. I don't know whether there is any truth in that or not.

Q. Now, what business was transacted at this meeting?

A. At the request of Mr. Diggs, I read a copy of a constitution and bylaws that we had drawn up for the transportation department.

489 There had been so much discussion and so many requests made by Mr. Bishop and quite a number of supervisors and others in the Transportation Department, or, I mean, others than employees opposing joining a system-wide organization that, naturally, I felt quite seriously about it.

So after I received this request from Mr. Diggs to be present at this meeting, I was there and took a copy of the constitution and bylaws. They asked me to read them and I think Mr. Nicholson, who was at that time a temporary chairman of the meeting, ask me to outline a proposed organization on the blackboard, which I did.

There were quite a number of employees there who were not in accord with our movement to organize the transportation unit or transportation union, and they were taking it out on our committee and me, being the chairman of the committee, I received all of the criticism.

Q. Was your organization, as you pictured it by your drawing on the board, voted on at that time to see whether or not it could be adopted?

A. It was not.

Q. What was done then?

A. It was decided at this meeting to elect a steering committee. The steering committee was to enter into all of the business relative to performing the present I. O. E. business. In other words, they were to contact the lawyer and get a

490 constitution and bylaws drawn up that would embody all of the employees of the company, and that they would begin negotiating a contract with the company.

Q. How were these members of the steering committee elected? Were they elected that night?

A. Yes, sir.

Q. And I believe you testified that this meeting was a meeting of the representatives of the various departments?

A. That is right.

Q. And can you recall who were elected on the steering committee there that night?

A. I think Mr. Damen Tatem was elected. He was elected chairman of the meeting and I think he was elected Chairman of the Steering committee also.

Trial Examiner FORT. Will you give the approximate date of this meeting?

Mr. SPENCER. I think he said it was around the first of May.

Trial Examiner FORT. The first of May or the first of June?

Mr. SPENCER. The first of June.

Trial Examiner FORT. How close to the first of June was it?

The WITNESS. I would say in the first week.

By Trial Examiner FORT:

Q. Not later than the 7th of June?

491 A. I don't think so.

By Mr. SPENCER:

Q. I will ask this question just to clear up this point. Did you attend any meetings of the Steering Committee in any town other than here in Norfolk?

A. No, sir. I attended a meeting in another town before the Steering Committee in Norfolk was elected or appointed.

Q. Where was that meeting held?

A. Petersburg.

Q. Was this meeting about which you are now testifying here in the Virginia Electric and Power Company Building before or after you attended the meeting in Petersburg?

A. This was after the meeting in Petersburg.

Q. What was the date when you attended the meeting in Petersburg?

A. The latter part of May.

Q. Not later than the first week in June when you attended this meeting, I believe you said?

A. Yes, sir.

Q. Can you recall any of the names of any of the other members who were elected to the Steering Committee there that night?

A. No; I cannot.

Q. Just how were these Steering Committeemen elected? Will you tell us that again, please? What was the set-up? Give us the set-up of the Steering Committee in the various departments and just what each department would do?

492 A. The Steering Committee was elected by the Representatives at this meeting in the auditorium of the Virginia Electric and Power Company Building on this particular night. Most of the representatives there at that meeting were the same representatives that had attended the meeting here in Norfolk called by Mr. Holtzclaw and the officials who conducted the meeting here in Norfolk. I understand they went back to their respective departments and held some sort of election to make it look like it was legal. And practically all of the same

representatives were chosen again to participate in any company union that might be formed.

Q. I believe you just stated you attended a meeting at Petersburg?

A. That is right.

Q. Around the latter part of May?

A. Yes.

Q. Who was present at that meeting and how did you get notice that there was to be a meeting in Petersburg?

A. Somebody called me on the company's telephone in the dispatcher's office. They called me from Richmond. I don't recall now who it was because the connection of the phone was right bad.

Q. Was it local or long distance?

A. It was a long-distance call from Richmond. They said they were in the dispatcher's office in Richmond and
493 thought that there was going to be a meeting in Petersburg of the representatives of the Richmond Division and representatives of the Norfolk Division, and they asked me to attend.

I told them I didn't know whether I would be able to attend or not because I had something else to do that night. At any rate, I don't think there was anybody from Norfolk who attended that meeting that night.

Q. Do you know whether or not they held the meeting on the night designated?

A. I don't think they did.

Q. Did you hear anything with regard to the meeting the next day?

A. Mr. Bishop called me into his office the next day and asked me why I did not go to Petersburg the night before. I told him I had something else to do. He said, "they are having a meeting up there tonight and you ought to go." He told me I ought to go. So Mr. Hough and two others and myself went up to Petersburg the following night.

Q. Where was this meeting held in Petersburg?

A. It was held in the Virginia Electric and Power Company Building in Petersburg on the 2nd Floor.

Q. Who were present at that meeting?

A. Several men who claimed they were representatives of the Richmond Division of the Employees of the Virginia
494 Electric and Power Company. Mr. Eugene Underwood appointed himself as Chairman of the meeting.

Q. What do you mean by appointed himself as Chairman of the meeting? What do you mean by appointed himself as Chairman?

A. We were all strangers. I mean there were two groups there that were strangers to each other. It was the first time I had ever seen Eugene Underwood. So he invited us in and said, "Well, gentlemen, if there is no objection I will take charge of the meeting. We are going to have a meeting, so I will be the leader."

Nobody had any idea definitely what the purpose of the meeting was. So they had a list of lawyers on a piece of paper there and several resolutions which they read to us and asked us to vote on in a joint conference of representatives of the divisions.

I refused to vote because of the fact I was not sent up there by the men in the Transportation Department. I think the records of that meeting will show that I did not participate in any of the voting.

It was at this meeting, I think, that they decided to retain or contact Mr. White, an attorney in Petersburg, to serve as legal adviser for this proposed company union. Mr. White, I later found out, was contacted and retained as the legal adviser,
495 and later drew up the constitution and bylaws for this union.

By Trial Examiner FORT:

Q. That was about what date?

A. That was in May. It was in the latter part of May.

Q. That was before the June meeting?

A. Yes, sir.

By Mr. SPENCER:

Q. Mr. Elliott, I show you a photostatic copy which reads "Joint meeting at Norfolk and Richmond Committees in Petersburg," dated June 3, 1937. I wish you would look at this and state whether they are the minutes of that meeting?

A. Yes, sir. I missed that date a little bit. I said it was the latter part of May but I see here it was the 3rd of June.

496 (The document above referred to was marked for identification "Board's Exhibit No. 19.")

497 By Mr. SPENCER:

Q. Now, after the meeting of June 3rd in Petersburg, where was the next meeting that you attended, which was held here in Norfolk?

A. The next meeting was held at the V. E. P. auditorium.

Q. I show you a photostatic copy of the minutes of the meeting held on June 17th in the V. E. P. building, and ask you if those are the minutes of the meeting that you attended, and if that is the date that you had reference to a moment ago when we were discussing this meeting?

A. Yes, sir.

Q. I notice that these minutes are signed by E. T. Diggs, secretary. Do you know whether this is the Mr. Diggs that sent you the notice to attend this meeting?

A. On the same date; yes, sir.

498 (The document referred to was thereupon marked "Board's Exhibit No. 20" for identification.)

By Mr. SPENCER:

Q. Mr. Elliott, after the meeting of June 7th, when and where was the next meeting that you attended?

A. In the Y. M. C. A. on 18th Street in the V. E. P. Building.

Q. Who called this meeting? What was the purpose of calling this meeting?

A. To explain exactly what was being accomplished and what had been accomplished and what this system-wide organization was doing, to refer it back to the members to vote and see whether they wanted to affiliate with the system-wide organization.

Q. And was a vote taken at that meeting?

499 A. There was; yes, sir.

Q. What was the outcome?

A. The outcome was that the men did not want to do anything until after the expiration of 30 days from the date of the meeting in which they agreed to follow that plan.

Q. In other words, you already had agreed that you would try this plan for 30 days, and the 30 days had not expired at that time?

A. Yes.

Q. Was any other business discussed at that time?

A. Evidently. I do not recall just what it was.

Q. Do you recall about the date that this meeting was held?

A. It was about the 10th or 11th of June.

Q. Now, after you attended——

Mr. WHITE. Just a minute. I did not get that answer. Have the Reporter read it.

Trial Examiner FORT. He said it was about the 10th or 11th of June.

By Mr. SPENCER:

Q. After the meeting in Petersburg, did you ever see Mr. Underwood again?

A. Yes, sir.

Q. Where did you see Mr. Underwood the first time after the meeting in Petersburg?

A. At the meeting in the V. E. P. Y. M. C. A. on 18th Street June 11th, or approximately June 11th.

500 Q. And where is Mr. Underwood employed?

A. Now?

Q. Where was he employed at that time?

A. I don't know, but he made a statement that he was a confidential secretary or private secretary to Mr. Fitz, who is, I understand, a general manager of production for the electrical division.

Q. And where was Mr. Underwood's employment?

A. Richmond.

Q. Do you know how Mr. Underwood got the notice that there was going to be a meeting here in Norfolk on June 11th, or approximately that date?

A. I have no idea, unless he read an article in the paper that morning, in the Norfolk Virginian-Pilot, stating that they were going to have a meeting, and that there was a question about whether the company legally had a right to deny our organization on 18th Street a collective-bargaining conference, and there was a statement in the paper that we were going to refer the question of this unit to the National Labor Relations Board for settlement, and that statement created quite a bit of stir among the employees, and I think also among the officials of the company.

501 Q. Now, you called this meeting, I believe you just stated. Did you notify Mr. Underwood to be present?

A. I did not.

Q. Did you authorize anyone else to notify Mr. Underwood to come down——

A. I did not.

Q. To attend this meeting?

A. No, sir.

Q. Will you state what participation, if any, he had in this meeting?

A. The meeting was called for 11 a. m. When I entered the Y. M. C. A. hall, Mr. Underwood was sitting in the chair right by the door. I went over and shook hands and asked him what brought him down. He told me that he had a sick grandmother in the hospital, or a sick aunt in the hospital, and he just happened to be down. So he made the statement that he would like to have a few words to say to the men. So naturally it was only fair to let the men hear first-handed what the company union was. I agreed to let Mr. Underwood talk. He talked for 55 minutes trying to tell them what the company union was, and I think if he had talked ten more minutes they would have thrown him out. Anyway, he said that—when he first started talking, he said he had a sick grandmother

502 or a sick aunt in the Protestant hospital down here; and then later in the meeting he made a statement that he was sent down there. So he contradicted himself so many times during the meeting that the men did not have any faith in him.

So during his talk he begged the men to forget our 30-day plan and come on and join the system-wide organization, and we could accomplish a whole lot with the company, and he said that the company would absolutely refuse to deal with the C. I. O. or the American Federation of Labor; that they had a lot of money to fight such organizations; and that he knew through his acquaintances in a circle up in Richmond, that the company was going to be very favorable to his organization; and he told [illegible] that the path of least resistance was the best path to take in this particular case, and that that path of least resistance was through an independent system-wide [illegible] ion.

507 AFTER RECESS

A. I don't think so.

Q. Mr. Elliott, after this meeting what did you do? I am referring to the meeting of the 22nd at the Blair Junior High School.

A. I went outside of the auditorium and signed a C. I. O. membership card.

Q. When did you attend your first meeting of the C. I. O.?

A. Around the first of June I attended as Inspector.

Q. After you joined the C. I. O. when did you attend the first meeting?

508 A. About June 25th or 26th.

Q. How long after you became a member of the C. I. O. was it before they held an election of officers?

A. Either the first or second meeting. It was within ten days, I will say, of the other meeting.

Q. Of June 21st or 22nd?

A. Yes.

Q. Who were elected officers of the C. I. O.?

A. W. E. Twiford was elected as financial secretary.

By Mr. MOORE:

Q. Will you talk a little louder, please?

A. Mr. Twiford was elected as financial secretary; Mr. Phillips was elected Vice President, he being a bus operator at Norfolk, and I was elected President. I don't recall who the other officers were.

Q. I was questioning you about the C. I. O. What connection is there between the C. I. O. and the Transport Workers Union, which is involved in this proceeding?

A. The Transport Workers Union is an affiliate of the C. I. O. The Transport Workers Union is a union which has jurisdiction over streetcar and bus operators and transportation workers. I think it is the only union affiliated with the C. I. O. which has such jurisdiction.

Q. Let's go back, Mr. Elliott, to the first meeting that you attended early in May, the meeting for which you saw the bulletin posted in the Dispatcher's office and in the company Y. M.

509 C. A. Who all spoke at that meeting other than the persons who have already identified, that is, you and Mr. Reutt? Was there anyone else?

A. A streetcar operator by the name of Everard M. Mann.

Q. What participation did Mr. Mann have there at that meeting and what did he say?

A. He very openly and boldly denounced any such plan that we had for forming a 30-day organization or an independent organization or anything that might be considered as a company union, and he openly advocated that we join the C. I. O. or the A. F. of L. or any outside bona fide organization.

Q. Did his idea get any support at the meeting?

A. Quite a bit; yes.

Q. By that you mean what?

A. I mean there were quite a number of men who commented to me, that Mr. Mann's idea was good.

Q. Do you know whether or not Mr. Mann is still employed by the Virginia and Electric Power Company?

A. He is not.

Q. Do you know when his employment was terminated?

A. Possibly a week after this meeting. I mean this meeting we were just talking about.

510 Q. Was that an uncommon occurrence among bus operators and car operators in speaking of Mr. Bishop in the absence of Mr. Bishop, that is, to refer to him as "Bishop"?

A. It was a very common occurrence. About all of us men referred to him as Captain, or Bishop, or boss.

511 Cross-examination by Mr. WHITE:

Q. Mr. Elliott, I believe you identified Exhibit No. 12 as being the petition which was signed and which was prepared by you?

A. Yes, sir.

Q. When was this petition prepared? Will you please state the date it was prepared?

A. The first of May or the first part of May 1937.

Q. At what meeting of the employees was that petition first presented?

A. At the meeting it was called by Mr. Reutt. A notice was posted on the cashier's cage in the building. I think the meeting was held around the first part of May.

Q. Mr. Elliott, I think you testified once before that was May 11th?

A. Yes.

Q. That is when the meeting was actually held?

512 A. Yes.

Q. How long before May 11th did you actually prepare this petition?

A. The night before.

Q. At that time had you made any plans as to the form of organization that you wanted to organize?

A. None whatsoever.

Q. Had you been in discussion with any other departments of the company prior to that time with respect to what was being done there?

A. Prior to what time?

Q. May 10th, that is, prior to the meeting, that is, at the time you had prepared this petition?

A. I don't think so; not that I recall.

Q. I notice, Mr. Elliott, that at the top of this petition is addressed to Officials of the Virginia Electric and Power Company and Employees in the Transportation Department in the Norfolk Division, the way it reads now, but there has been struck out the words "Richmond, Portsmouth, and Petersburg." Why were those words originally included in the petition?

A. That was my own idea.

Q. Why did you have that idea? What was the idea?

A. I thought perhaps if we got any wage increase in accordance with Mr. Holtzclaw's bulletin that certainly the transportation department in the other cities would want a wage increase too.

513 Q. To what bulletin are you referring?

A. The bulletin No. 26.

Q. And so you thought that perhaps the idea would spread to the other departments?

A. That thought entered my mind; yes, sir.

Q. Then why was that portion of the statement stricken out?

A. Because it was voted by the men at the meeting to strike it out.

514 Q. Was it discussed as to whether you would go through the other departments of the company?

A. Absolutely.

Q. And voted down?

A. Yes.

Q. And that includes Portsmouth, as well as the other departments; is that right?

A. Yes, sir; that is right.

Q. Now, Mr. Elliott, when you presented these petitions for signature to the employees in the Norfolk Transportation Department, did you show them the first page, or did you merely show them the list of names?

A. I read the first sheet there, that you are looking at now. After I read it, I turned the whole booklet—it was in booklet form——

Q. You mean clamped together?

A. Yes—over to someone else. Whether they showed it to anybody, I do not know, but I notice that there were quite a number of men crowded around the man who had the petition, and they seemed to be examining it very thoroughly.

Q. Who was the man that had the petition?

A. I turned it over to Mr. Hopkins.

Q. Mr. Hopkins?

A. Raymond Hopkins.

Q. Mr Elliott, I also notice that where the names are
515 signed on the first page, and where any names are signed, is page 1. Do I understand that what you did was to prepare this sheet separately, and then prepare the other side, and then the rest of the paper, a number of pages at a time? I will show you the exhibit. Was that separately prepared from this [indicating]?

A. The whole thing was prepared together the night before the meeting of May 11th. Naturally, I could do but one thing at a time; so they had to be prepared separately. Each page was separately prepared.

Q. Was there any particular significance attached to the fact that page 1 was not actually the first page of this petition as it was completed?

A. Not that I know of.

Q. And it was on May 12th that the petition was presented?

A. I don't think it was on May 12th.

Q. You don't think it was May 12th?

A. It seems to me as if we fixed the date as May 11th.

Q. May 11th; that is right. Now, Mr. Elliott, I find on this photostatic copy, which has been introduced in evidence, up in the right hand corner of each of the pages where the people have signed their names, certain data, and it has been erased. On some of these pages it is impossible to tell what has been

erased, and on some of the other pages you are able to read:

516 "Are you in favor:

"1. C. I. O.

"2. A. F. of L.

"3. The Independent Organization."

Did you put that on this paper when you prepared it?

A. I did.

Q. On the night before?

A. Yes, sir.

Q. What was significant about putting that there?

A. The purpose was to find out if the occasion should arise to take a vote on how the men felt towards unions, to take that vote and see what they thought about joining the American Federation of Labor, the C. I. O., or the Independent Union.

Q. Was any such vote taken at that meeting?

A. There was not.

Q. Was the matter brought up?

A. The matter was brought up; yes, sir.

Q. What happened?

A. It was decided—there was no motion introduced on the floor about the C. I. O. or the American Federation of Labor. Someone introduced a motion to try this plan for a sufficient length of time to see if the company would act upon it.

Q. And do you recall who made that motion?

A. I do not.

Q. How did the people at the meeting signify their
517 choice—by show of hands, secret ballot, or how?

A. Show of hands.

Q. Well, I believe you testified that you took this petition and gave it to Mr. Bishop.

A. The committee and I.

Q. I mean you and the committee.

A. That is right.

Q. Was this first page on then at the time you delivered it to Mr. Bishop?

A. It was.

Q. And was it delivered without having anything in the place where you had evidently fixed your designation for collective bargaining agent on the first page, or was it turned in on blank form?

A. You mean the names?

Q. Yes; were the names filled in?

A. I don't recall whether they were or not.

537 Q. Now, please testify at this time, to the best of your recollection, to all the meetings held prior to May 26th,

1938, which you have not previously testified to.

Trial Examiner FORT. I would suggest that he name them all now, rather than trying to pick them out.

By Mr. WHITE:

Q. Just name off all of the meetings, in order, as well as you can remember them.

A. I attended a C. I. O. meeting.

Q. When?

A. Some time just prior to hearing Mr. Holtzclaw talk—within a week.

Q. Within a week? Would you say it was within two or three days, or would you put it as close as that?

A. No: within a week is as close as I can fix it.

Q. All right. That was a C. I. O. meeting?

A. Yes.

Q. Where was that held?

538 A. In Moose Hall, here in Norfolk.

Q. Was that a meeting of the employees of the Virginia Electric & Power Company or some other organization?

A. Employees of the transportation department of the Virginia Electric Power Company.

Q. And that was the C. I. O. meeting at that time?

A. Yes.

Q. Had any local or any C. I. O. affiliated union been formed here at that time?

A. I don't know.

Q. How is that?

A. I don't know.

Q. How many people attended that meeting?

A. About 35 or 40.

Q. They were all transportation employees of the Virginia Electric Power Company?

A. Not all of them: no, sir.

Q. Who were the others who were not transportation employees of the Virginia Electric Power Company?

A. I can't recall, but Mr. Merrill was there. He is an attorney in Norfolk. Mr. Lathem, of the International Brotherhood of Electrical Workers, I think was at the meeting.

Q. This was the C. I. O. meeting?

A. No: he didn't go into the meeting. That is right.

539 He was outside. Mr. Edwards, the supervisor, did not come into the meeting, but he was outside of the meeting writing down the names of all the employees that went in.

Q. And who else?

A. I don't know. There were two or three strangers there that I didn't know their names.

Q. And that was not a meeting of any local, you say, or any union which is affiliated with the Committee for Industrial Organization; is that right?

A. No; I didn't say so.

Q. I understood you to say that no local had been formed at that time?

A. No; I said I didn't know.

Q. And you don't know now?

A. I still don't know. I know it was a C. I. O. meeting. Whether they had a local, I do not know.

541 Q. May I refresh your recollection, Mr. Elliott? I think you testified on direct examination that there was a meeting held, as you stated, May 29th or May 30th at the company Y. M. C. A., and at that time you stated you proposed to start a 30-day organization. Will you please tell exactly what happened at that meeting? I think you said on direct examination it was the meeting of May 29th or 30th?

A. What did I say about it?

Q. It was held at the company Y. I asked you what took place at that meeting?

A. You just told me something took place, and I didn't quite catch it.

Q. You stated the purpose of the meeting was to start a 30-day organization?

542 A. Yes.

Q. Will you please state what took place at that meeting?

A. We started a 30-day organization.

Q. In what way?

A. I think by distributing these application blanks.

Q. Those were the application blanks which I believe you identified as Board's Exhibit No. 14?

A. I think so.

Q. And these are the ones [indicating]?

A. Yes.

Q. Those were the application blanks that you had printed?

A. Yes.

Q. Did you have any other literature printed in connection with those?

A. Some membership cards.

Q. Have you any of those cards left?

A. I have some at home. I do not have them with me here.

Q. This application for membership names this organization as the "Employees Association of Committees." Who selected that name?

A. I don't recall exactly which one proposed it, but the committee passed on it.

Q. Exactly what committees were you referring to? When you named it "The Association of Committees," what committees did you mean?

543 A. A bus committee and a street car committee. There were two men selected to represent the bus drivers and two men selected to represent the street car operators.

Q. You are referring here to the constitution and bylaws and regulations of this organization. Have you a copy of the constitution and bylaws of that organization which is referred to in this application for membership?

A. I do not have; no, sir.

Q. You have not?

A. No, sir.

Q. Did you have one prepared and have it at the meeting?

A. No.

Q. Was one ever prepared?

A. Later; yes, sir.

Q. What were you referring to when you had your membership application made up referring to a constitution and bylaws nonexistent? What was your idea in that?

A. The purpose was for the men to draw up the constitution and bylaws themselves and not have a lawyer draw them up.

Q. You had in mind some plan of organization, didn't you?

A. I had in mind some plan?

Q. Yes; when you had this thing made up?

A. Quite naturally; yes.

Q. Did you make this up yourself?

A. Parts of it.

544 Q. You made up the rest of it?

A. It was made up from ideas and suggestions given me from a number of employees in the transportation department.

Q. Who idea was it to have the Director of Employees Association of Committees?

A. Whose idea was it?

Q. Yes.

A. That was the idea of the committee, so far as I can remember.

Q. Do you recall what the powers of the Director were to be?

A. At that time the Director did not have any power.

Q. Do you recall what they were supposed to be?

A. How could he have any powers when the constitution was not drawn up, unless it states on there some power that he was supposed to have.

Q. Section F of the agreement, Board's Exhibit No. 14, reads as follows:

"f. To recognize as the Director of the Employees' Association of Committees, with the powers entrusted in him by the Constitution and Bylaws and regulations of this organization."

Did you get the men to sign this in blank before you had any constitution and bylaws?

A. Certainly.

545 Q. What was the purpose of that?

A. Because the men themselves would want to have a hand in drawing up the constitution and bylaws.

Q. Did you ever get to the point where you explained what the constitution and bylaws would be?

A. Did I ever get to the point?

Q. Yes.

A. I don't understand the question.

Q. Did you ever get up before a meeting of the employees of the Virginia and Electric Power Company and explain to them what was intended to go into the constitution and bylaws which was to accompany this application for membership?

A. Did I ever get up before any employees of the Virginia Electric and Power Company in explaining?

Mr. WHITE. I will ask that the question be read.

Q. (The question was then read by the Reporter.)

The WITNESS. Yes, sir.

By Mr. WHITE:

Q. What was to be the power of the Director under this particular or proposed constitution and bylaws?

A. I don't recall at the present. It has been a long time since I read it.

Q. But you did get to the point of formulating the constitution and bylaws?

A. Yes.

Q. Do you recall that the Director of the Association
546 could not be removed by the organization except by a court order?

A. I think so; yes.

Q. Do you recall that the Director of the Organization was to draw a salary?

A. I think so.

Q. Do you recall that the Director of the Organization was to be practically the exclusive bargaining agent for the Association?

A. I do not.

Q. Who was to be the bargaining agent?

A. A committee.

Q. A committee composed of whom?

A. Composed of the representatives of the men or of the employees.

Q. As I understand it, there were some dues provided for in this Association of Committees?

A. Yes.

Q. Were dues collected?

A. None that I recall.

Q. No dues were paid in?

A. No.

554 Q. Do you recall a meeting on June 1st on the sixth floor of the Virginia Electric & Power Building before I appeared to explain the constitution and bylaws?

A. I recall a meeting on the 6th floor around the 1st of June; yes, sir.

Q. You do not deny that it was on June 1st, do you?

A. Well, I do not confirm it either.

Q. But you do not deny it?

A. It was the first part of June or the latter part of May.

555 Q. The latter part of May or the first of June?

A. That is right.

Q. As I understand it, on May 29th or 30th you had not prepared any constitution or bylaws? I think you stated that you had not prepared any constitution or bylaws at the meeting of the transportation employees on May 29th or 30th, at the time you had the applications for membership signed?

A. Did I say that?

Q. I think so. I would like to have it read back. That is my recollection of it. Is that statement incorrect? If it is, do you want to make a correction?

Mr. HILTON. Well, if the record is so, it will show it.

Trial Examiner FORT. Yes; go right ahead with your present examination. The record will speak for itself.

By Mr. WHITE:

Q. When was the constitution and bylaws prepared that I am referring to?

A. Just a night or two before this meeting on the sixth floor of the V. E. P. Building.

Q. Who prepared them?

A. I drew them up, at the suggestion of the committee.

Q. Was that the committee or four that you have been referring to?

A. That is right.

Q. And they suggested that you draw up the constitution and bylaws?

556 A. They suggested that I go into the constitution and bylaws.

Q. Including the provision for a director?

A. That is right.

Q. What happened at that meeting? Did you explain the constitution and bylaws to these employees?

A. I think the first thing that was done was that Mr. Tatem was elected permanent chairman of the Norfolk division. If I recall correctly that was the meeting at which he was elected permanent chairman. I think Mr. Nicholson had been chairman up until that time. He was ousted.

Q. Now, what else happened?

A. I read a portion of this constitution and bylaws and laid them on the table, and turned my back, and somebody stole them.

Q. And you do not have any further copies?

A. That is the only copy I had. Somebody stole that copy.

Q. What other action was taken at that meeting?

A. At that meeting?

Q. Yes.

A. It seems to me as if it was decided at the meeting that some committee, a steering committee, would meet the steering committee from Richmond and formulate plans for the I. O. E., or what later turned out to be the I. O. E.

Q. May I refresh your memory? Was there not a mo-

557 tion made that the constitution be printed and considered at a meeting to be held a week from that date?

A. I believe it was; yes, sir.

Q. There were minutes kept of that meeting, were there not?

A. No; I don't recall.

Q. The action taken at the meeting, as you now recall it, was that the constitution and bylaws were to be printed and considered at a subsequent meeting to be held a week from that date; is not that correct?

A. That is right. That is not the only action that took place, though.

558 Q. When was the meeting at Petersburg?

A. I think it was June 3rd.

Q. June 3rd?

A. Yes.

Q. How did you happen to go there?

A. What is that?

Q. How did you happen to go to it?

A. Someone from Richmond invited me to go up there.

560 By Mr. WHITE:

Q. What part did you take in that meeting?

A. I attended the meeting.

Q. Did you make any motions?

A. I don't recall.

Q. Did you take any active part in the meeting?

A. A little; yes, sir.

Q. Did you state at that meeting whether you were favorable or unfavorable to the proposal of a system-wide organization?

A. I don't recall.

Q. What was your attitude at that time?

A. My attitude at that time was one to listen and see what was going on.

Q. Did you not intend to take any more action than that?

A. What do you mean—at that particular meeting?

Q. Yes.

A. I had no intentions when I went up there other
561 than to act on the invitation.

Q. After you got there did you change your mind any?

A. Oh, I expect I did several times.

Q. After the meeting at Petersburg, you knew then that a system-wide organization was contemplated, did you not?

A. Yes.

Q. After your return from Petersburg, did you maintain contact with the other Norfolk delegates?

A. Do, I?

Q. Who attended the meeting with you?

A. Did I do what?

Q. Did you maintain contact with the other Norfolk delegates who attended the meeting with you?

A. I expect I did, due to the fact that I was constantly
562 talking to employees of the Virginia Electric & Power Company. Some I didn't know who they were.

Q. Did you report to your group of transportation employees what transpired at the Petersburg meeting?

A. Did I report?

Q. Yes.

A. I did.

Q. You did?

A. Yes.

Q. And when did you make that report?

A. At the next meeting that we had at Norfolk.

563 Q. Was the formation of a system-wide organization discussed at that meeting in the V. E. P. Co. "Y"?

A. In the auditorium?

Q. Right at that meeting on June 7th.

A. Well, I don't know. A lot of days there were two or three meetings held.

Q. You mean different groups of employees?

A. Certainly.

566 Q. When did you have your next meeting of the Transportation group after June 10th or 11th?

A. There was a C. I. O. meeting which was the next meeting.

Q. That was, of course, in June?

A. Yes.

Q. How much after the meeting which Mr. Underwood attended?

A. That was about a week before the meeting held in the Blair Junior High School.

Q. Do you recall attending a meeting of the Steering
567 Committee which was trying to establish this system-wide organization, which was held at the Navy Y. M. C. A. around June 16th?

A. Yes.

Q. Do you recall telling at that meeting that the group you represented wanted to affiliate the system-wide organization?

A. I did not.

Q. You deny making any such statement to that group?

A. I do not deny it; no, sir. I don't recall it.

Q. Do you recall attending the meeting?

A. Yes; I do.

Q. Do you recall making a statement to a newspaper the day following that meeting at Navy Y. M. C. A. with respect to affiliation of your group and the other groups representing other departments in the company?

A. Do I recall making a statement to the newspapers?

Q. Yes.

A. The next day?

Q. Yes; or that night.

A. What was the statement?

Q. That the group of transportation employees expected to affiliate with the other groups which were being formed for collective bargaining purpose with the Virginia Electric and Power Company?

A. Expected to?

Q. Yes.

568 A. I did, or a statement similar to that.

Q. Mr. Elliott, what did you tell that meeting at the Navy Y. M. C. A. about the attitude of the Transportation Department employees?

A. I told the Steering Committee—Was that what you asked about?

Q. Yes.

A. I told the Steering Committee, if I recall just exactly, that Mr. Bishop had been very active in trying to get me to switch over to the system-wide union and that it looked like a hopeless job for us to try to keep the Independent Transportation Workers Union going.

Q. Did you ask permission from that meeting to make a statement to the paper?

A. Did I ask permission to make a statement to the paper?

Q. Yes.

A. I might have. That the permission was to make a certain specific statement.

Q. You recall asking permission to do that?

A. To make a certain specific statement; yes.

Q. Do you recall making that statement to a representative of one of the Norfolk newspapers?

A. I recall making a telephone call to the Norfolk newspaper.

Q. Did any article appear in the newspaper?

A. It did.

Q. Who was present at that meeting at the Navy Y. M. C. A. which you now recall?

A. Mr. Hough.

Q. Who else?

A. I don't recall.

Q. Do you recall whether Mr. Tatem was there?

A. I think he was.

Q. Mr. Diggs?

A. I think so. I am not positive.

Q. According to your recollection, how many people were there?

A. Around 50.

Q. And you made the statement in the presence of all of them? Did you make a statement in the presence of all of them at that meeting?

A. I think so.

Q. Including your statement about Mr. Bishop?

A. Certainly.

Q. Did you have a meeting of the transportation employees between June 16th, which was the date of the meeting held in the Navy Y. M. C. A., and June 22nd, which was the date of the meeting at the Blair Junior High School?

A. I attended a C. I. O. meeting between those two dates.

597 Q. Now, Mr. Ruett did not have any further drop to do at the meeting, did he? After that you went ahead and read the petition and carried on discussion and then started signing up? There was no further public speech discussion, was there, after he finished?

A. Yes, there was too; yes, sir.

Q. Was there any dissention among the persons present?

598 A. Quite a bit of dissention from one man in particular. He objected to every that was done along these lines, and s was Mr. Mann, he called us all a bunch of yellow-spined mice, louse, or rats, or something, and just said we did not have backbone enough to stand up for what was right and what we were guaranteed under our constitutional rights, and so forth, and suggested in this meeting openly that we join the C. I. O. or the American Federation of Labor and make a cold stand for a bona fide labor organization.

Q. You fellows just sat there and listened to Mr. Mann call you those things?

A. With our mouths wide open; yes, sir.

600 Q. Before I overlook it, I want to ask you whether or not, in connection with these 15 men that you said you understood were signed up, along with Mr. Dunbar, in 1934, was it, or was it in 1935? In 1934, going in and seeing Mr. Bishop, had any of the other 15 been discharged?

A. Not to my knowledge; no, sir.

607 By Mr. MOORE:

Q. Will you please look at this report and state whether or not that is the original accident report which you signed covering an accident that occurred April 12th, 1937, in which you were hurt [indicating]?

A. That is right.

Q. Is that the original?

A. I think it is.

Mr. MOORE. We would like to file a photostatic copy of that, Mr. Examiner, as Respondent's Exhibit No. 3.

(The document above referred to was received in evidence and marked "Respondent's Exhibit No. 3.")

608 Q. How long were you disabled because of this accident?

A. For about two months, approximately, or a month or a month and a half or two months.

Q. So that from April 12th until June 17th you were entirely off duty, weren't you?

A. That is right.

Q. How much of that time were you disabled to such an extent that you were not able to get around much?

A. Most of the time, Mr. Moore, I was under the care of who is the company doctor.

609 Q. Still that does not tell us just what I am trying to find out. Were you in the hospital at all?

A. I went to the hospital when the accident occurred; yes, sir.

Q. How long were you at the hospital?

A. Several hours.

Q. Then did you go home and stay at home?

A. I did.

Q. How long were you confined to your home?

A. About a week.

Q. So approximately a week after the accident you were able to get around and go places you wanted to go?

A. That is what the Doctor said.

Q. And you did move around about as freely as if you did not have the accident?

A. No; not as freely; no, sir.

Q. You noticed on this accident report you made no mention of losing all of that money, did you?

A. I made another statement as to the money that was lost.

Q. Did you make it at the time you filed the accident report?

A. I don't think I did.

617 Q. Mr. Elliott, you recall that on yesterday, during your cross-examination by Mr. White, he asked you about the applications in the organization that you referred to as the Employees' Association of Committees, and there was some objection made to obtaining these applications. Have you brought them with you this morning?

A. No, sir.

Q. Where are they?

A. I gave the applications back to some of the employees, where the rest of them are; I think Mr. Hough has them.

Q. Approximately how many of these applications did you obtain signatures on?

A. Approximately 175.

Q. Approximately how many did you give back to the individual employees who had signed them?

A. All that asked for them, and I remember I gave Mr. Hough some. I do not recall exactly how many.

Q. Well, what is your best estimate as to how many you gave back to individual employees?

618 A. Roughly, about 75.

Q. Now, did you turn over to Mr. Hough the remaining hundred, approximately?

A. I don't recall. I returned to Mr. Hough quite a few. I do not know how many there were. Possibly he could tell you how many there were.

Q. Why did you turn them over to him?

A. Because he asked me to turn them over to him.

Q. Did he assign any reason for his request?

A. He said there were quite a number who had approached him and asked him to get them, so that he could turn them back.

Q. To the best of your knowledge, did you give him all of those applications that you, yourself had not given back to individual employees?

A. I don't recall.

Q. Well, have you any of them now?

A. I couldn't find any.

620 Q. Now, did you get all of those 175 signed within two or three days after the 29th or 30th of May?

A. Yes, sir.

Q. They were all signed within those two or three days?

A. Within two or three days after I first got them back from the printing office.

Q. And you then kept those until when? About what was the date that you started giving them back to the employees who would ask for them and when did you turn over the balance to Mr. Hough?

A. Around the 25th of June, I think.

Q. It was immediately after the meeting over at the Blair High School, was it not?

A. Yes.

636 Q. You were the author of both of these papers, were you not?

A. Both of what papers?

Q. Board's exhibit number 12, which was the original petition, and also Board's exhibit——

Mr. HILTON. No. 14, I think it is.

By Mr. MOORE:

Q. Board's exhibit No. 14, which is the application for membership, or, as we call it here for convenience, the E. A. C. You are the author of both, are you not?

637 Q. You were the author of both of these documents, the one you presented on May 11th, and the other one you presented to the meeting on May 29th? Did you not so testify?

A. That is right.

Q. Now, is it not a fact that after May 29th you considered that you were acting under authority conferred by a group of employees in the transportation department at Norfolk who had signed the E. A. C. application, and not under any authority conferred in that original petition of May 11th?

A. I did not say so.

Q. Well, I am asking you.

A. Well, I have answered that question twice, Mr. Moore. I said I was acting on authority that I thought was vested in me by the committee.

Q. Can't you answer the simple question as to whether you considered that you were acting under the E. A. C. authority or under the original petition authority?

A. I was acting under the committee's authority, Mr. Moore.

Q. What did you understand was the source of the committee's authority?

638 A. The committee had been selected by the men and they got their authority from the employees in the transportation department

Q. Was there ever any further selection of a committee to act for the men after this E. A. C. application was concluded on May 29th and distributed among the men for signature? Was there any further appointment of any committee to act for those men?

A. There was.

Q. When did that occur, and who was appointed?

A. I do not recall who definitely was appointed or when it occurred, except that it was later in this company union or the I. O. E.

Q. What is the date that you are referring to?

A. It was later. I do not recall the exact date.

Q. Well, as near as you can get at it.

A. Oh, I would say approximately thirty days later.

Q. Well, that would be——

A. Or less than that. I do not recall at the present time. The company-union officials can tell you about that.

Q. The I. O. E. contract was not presented until July 19th. When was it in reference to July 19th, as near as you can determine that, wher any committee was appointed to act under the authority set up in this E. A. C. form of application?

639 A. Oh, now, that is a different question. I do not recall that there ever was any committee appointed under that authority to act on any matters. There might have been. I do not recall at the present time.

656 Q. I want to refresh your mind on an interview that you gave to the Ledger Dispatch, the Norfolk Ledger Dispatch. In the Norfolk Ledger Dispatch of June 17th the following interview appeared:

657 "R. E. Elliott, Jr., the leading spirit in the plant to organize employees of the Virginia Electric & Power Company, said he had conferred with Crum."

658 Q. Will you just start reading right there [indicating]?

659 (The witness read to himself at the point indicated in the article, after which Mr. Moore showed the article to Mr. Hilton.)

Q. Did you give this interview to the paper?

A. I gave an interview to the paper.

660 Q. Well, is this a correct statement of what you said?

A. No, sir.

Q. You are reported here to have said:

"We are organizing an independent organization. The organization will be composed of members all over the V. E. P. division, Norfolk, Portsmouth, Richmond, Petersburg, and in other sections of Virginia."

Is that correct? Is that what you said?

A. It is not.

Q. How did you vary that?

A. I did not make any such statement as that in the paper.

Q. Well, do you deny the whole article?

A. I do not deny the whole article; no, sir.

Q. Well, what did you report?

661 A. Well, I made a certain statement to the reporter; the reporter in turn called up Mr. Crum; Mr. Crum made a statement to the paper; then, as I understand it, a reporter in turn called up the V. E. P. Company and asked them if it will be all right to print the thing; and they take all of those statements and put them together to make one statement; and so it is not my statement.

Q. I want to give you a full opportunity to make any corrections in it, if there are any.

Now, you say that the first paragraph is not correct, about you saying "We are organizing an independent organization"?

A. I made a very brief statement to the reporter regarding the independent organization. I told him that this article—this part right here, Mr. Moore [indicating]. I told the reporter, to the best of my knowledge, that I thought the transportation department would agree to come into the division-wide organization when it was assured that the new union, or the division-wide organization, would not be dominated by company officials.

Q. Well, now, did you tell him "We are organizing an independent organization"?

A. No; I did not tell him that. Evidently somebody else that he interviewed told him that.

662 Q. You are reported to have said that. Did you ever communicate with the paper and retract that, or [illegible] to correct it?

A. I called the paper up several times and told them that they made an erroneous statement of things that I said.

663 Q. Well, now, did you undertake to correct that? That is all I am trying to get at.

A. I think I did.

Q. Whom did you communicate with?

A. I do not recall. I called the Norfolk Newspapers, Inc., and talked to someone in the news room.

Q. Now, this next paragraph. You are reported to have said here:

"The Transportation Department agreed to come into the division-wide organization when it was assured that the new union would not be dominated by company officials."

Did you make that statement to the paper?

A. I just said that I made that statement.

664 Q. That statement is right. Now, let us see the next paragraph. You are reported to have said:

"The constitution of the proposed union provides that officials of the company shall have nothing to do with it and that it appears to be satisfactory to everybody concerned."

Did you say substantially that the constitution did provide that?

A. I did not say it in those words; no.

Q. Well, how did you express that?

A. I do not recall definitely how I expressed it, except that I told the Reporter that these things might be true; that I would not predict what was going to happen in the future.

Q. Now, the last statement reported to have been said by you is this:

"I do not believe our organization will affiliate with the C. I. O. or the A. F. of L. The men appear to prefer an independent organization with no strings on it and without obligations that come with affiliating pledges with national or international unions."

Did you make that statement?

A. I think somebody connected with the official staff of the Virginia Electric & Power Company made that statement.

Q. I asked you if you made that statement.

A. I do not know, sir.

Q. You deny making that statement?

A. I deny it.

665 (The document referred to was marked "Respondent's Exhibit No. 6" for identification.)

674 By Mr. Moore:

Q. When did you first attend a C. I. O. meeting?

A. I think it was some time in May.

Q. Just give us the date.

A. I don't recall.

Q. Can you give us an approximate date?

A. I think it was the latter part of May.

Q. Just as near as you can get at the date.

A. Approximately around the 20th or 25th, or maybe the 15th of May.

Q. Did you tell the men in the E. A. C. that you had started attending C. I. O. meetings?

A. I don't recall. There is no doubt but what I told quite a number of them, because there were quite a number of the E. A. C. members who also attended this—there were quite a number of men who signed this petition that attended the first C. I. O. meeting that I attended.

Q. As near as you can tell us, that was around May 20th?

A. Between the 15th and 25th of May?

Q. Between the 15th and 25th of May?

A. Yes.

675 Q. Now, it was at the second meeting that you attended the C. I. O. and after the Blair High School meeting that you elected an officer; was it not?

A. I think it was.

Q. That was about what date?

A. Not long after this, after the Blair Junior High School meeting.

Q. Just two or three days?

A. Oh, within two weeks.

Q. Within two weeks?

A. Yes, sir.

Q. How many meetings of the C. I. O. had you attended between, say, May 15th and May 25th, when you said you started attending those meetings, and, say, June 24th and June 25th, where you were elected president?

A. I don't recall—approximately eight, or seven, or five.

Q. Was there an established local union then in existence while you were attending the meetings?

A. I don't know.

Q. These meetings that you attended were meetings of the C. I. O. local here in Norfolk, were they, or were they with a group of organizers?

A. It was with a group of organizers.

Q. Where were those meetings being held?

676 A. Different parts of the city.

677 Q. Was there any local union of the C. I. O. in Norfolk, to which members of the transportation department of the Virginia Electric & Power Company were eligible for membership?

A. I don't recall.

Q. Well, so far as you know, was there any such local? That is what I am trying to get at.

A. I know that there were C. I. O. organizers in town, and they had signed up, as I understand it, on the night of June 22nd, approximately, at that time, a hundred transportation employees.

Q. Now, from June 22nd, when you signed the C. I. O. card, I presume you were then very active from that point on in soliciting members in the C. I. O. who were employed with the power company, were you not?

A. I never solicited even from the first man that joined the C. I. O. or who signed the C. I. O. card up to this date.

Q. Never solicited any at all?

A. No, sir. That is, if you define the word "solicit" as approaching somebody with a card and asking him to put his name on the dotted line; I never did that.

Q. Well, did you in other ways solicit them?

A. I talked in favor of the C. I. O. I talked in favor of

678 any outside organization.

Q. Are you still president of the C. I. O. Norfolk local, Transport Workers Union?

A. So far as I know, I am, but I am sorry to say that the company union has made the C. I. O. local very dormant on the property.

Q. When did you attend the last meeting of the C. I. O. local, including transportation employees, in the Norfolk district?

A. In July or August, I think, some time. It was the latter part of the summer.

Q. Did you ever have a charter for the local?

A. We had to.

Q. You must have had, if you were president.

A. Yes, sir.

Q. Do you know the date that that charter was issued?

A. I think it was in June.

Q. What date, approximately?

A. I don't recall.

Q. Well, approximately, as near as you can get at it.

A. Well, I don't recall, except that it was in June.

Q. According to that——

A. It may have been in July. As far as I know, I think it was around June 1937.

681 Q. You said the last day you worked for the power company was on November 1, 1937.

A. That is the last day I actually did any work for the company.

Q. That is right.

A. But my employment was not terminated on the first.

Q. I understand, but that was the last day you did any work for them?

A. That is right.

Q. And what was the next work that you did?

A. When?

Q. After November 1st.

A. The next work was with the Norfolk Labor Journal.

Q. What were the dates that you worked on that?

A. I worked about a week and a half or two weeks just prior to December 16th.

682 Q. Writing articles, getting advertisers, or what?

A. Both.

Q. And then what did you do?

A. Then I was employed by the Amalgamated Association.

Q. What is the date of your employment by the Amalgamated Association?

A. The contract that I have is dated effective January 1, 1938.

Q. What is the date of it?

A. I don't recall the date.

Q. You said it was effective January 1st. Did you mean to draw a distinction between the effective date and the actual date that it was signed?

A. It was signed, actually, before I went to work.

Q. How many days before, roughly?

A. About the middle of December.

Q. Is this a fair statement to make, then, that from June 22, 1937, at the meeting at the Blair High School, when you signed the C. I. O. card, up until, say, approximately December 15, 1937, you were identified with and were a member of the C. I. O., and were endeavoring in every way you could to promote its interests? Is that correct?

A. I was endeavoring in every way I could to promote the interests of the men over on 18th Street.

Q. I am referring now to the C. I. O.

683 A. Well, at that time my primary thought was not with the C. I. O. My primary thought was to do something to help the men on 18th Street.

Q. What were the dates that you worked for the Labor Journal, approximately?

A. From December 1st until about the 14th.

Q. And you immediately left there and went with the Amalgamated; did you? When did you join the Amalgamated? That is what I am trying to get at. I understood you to say about December 15th.

A. I didn't say I joined the Amalgamated.

Q. About when did you?

A. You mean as a member of the Amalgamated?

Q. As a member of the Amalgamated; yes.

A. Last summer.

Q. What date, approximately?

A. In July.

Q. What you mean is that you were a member of the C. I. O., Transport Workers Union, and the Amalgamated, both at the same time?

A. That is right. Other men in the departments of the Virginia Electric & Power Company are members of three or four different unions.

Q. Now, did the Amalgamated representatives know at the time you joined the Amalgamated that you still were continuing

684 your membership in the C. I. O.?

A. I don't know.

Q. Did you ever tell them?

A. I don't recall whether I did or not.

688 Q. Mr. Elliott, I hand you a paper which appears to be a bulletin dated June 24th, 1937, Virginia Electric and Power Company, signed by Mr. Holtzclaw, President, and I will ask you whether or not you identify this bulletin as one that was posted on the bulletin boards of the company about that date?

Trial Examiner FORT. This will be marked Respondent's Exhibit No. 7 for identification.

(The document above referred to was marked for identification as "Respondent's Exhibit No. 7.")

By Mr. MOORE:

Q. You say you identify this bulletin as the bulletin which was posted?

A. That is right.

Q. I notice in the upper left hand corner there is written in pencil the following words:

"Who said anything about a job in North Carolina? It is news to me too," signed Bob Elliott.

Is that your hand writing?

A. Yes.

689 Q. How long after June 24th did you write that on the bulletin?

A. I think it was on June 24th.

Q. Did you know that it was contrary to the rules of the company for employees to write on official bulletins at the time you did it?

A. No; I did not.

Q. Were you familiar with an interview which was reported in the Richmond Times-Dispatch of June 24th, 1937, about the meeting at the Blair Junior High School, where it was said at this meeting Mr. Thomason, Mr. Thomason being referred to as the C. I. O. organizer, said that Mr. Elliott charged that he had been offered a job in North Carolina with a salary of $350 a month to turn over his organization to the company and leave Norfolk. Are you familiar with that article?

A. I am quite familiar with it.

Q. Did you make any such statement as that to Mr. Thomason?

A. I did not.

690 Redirect examination by Mr. SPENCER:

Q. Mr. Elliott going back to the meeting in Richmond that you and Mr. Reutt and Mr. Hough attended, on cross-examination you stated that you had put down the names of several men on a slip of paper and that one of these men told you that he was going to write and tell you just what happened in regard to the help there that night. Just exactly what did he say to you there that night? Can you remember what he said?

A. There was quite a bit of comment by most of the employees or most of the men who attended this meeting, and the general gist of their conversation of all of them was that the company wanted a company union or wanted an independent union, and everybody was of the opinion, that is, everybody that I talked to, was of the opinion that the company planned to give the employees a raise; that the plans had been published or had been given out to certain supervisors, superintendents, and so on; that the company was going to give a raise on June 1st to all employees. That was to be a blanket raise. At this meeting or by the time of this meeting in Richmond that news had leaked out. When we talked after the meeting everybody was

of the opinion that the company was going to put off that raise that they anticipated giving the employees on June 1st; that is, they were going to put it off until the men had organized
691 into an independent system-wide organization even if it took a month, six months, or ten years.

That was the impression. And also that the company was going to give a raise as an incentive for the men to have an organization; that they had suddenly changed their minds about their raise and they were not going to give it until the men organized a system-wide organization to have representatives up in Mr. Holtzclaw's office to draw up a contract covering the raise that the company had already planned to give the men.

711 EVERARD M. MANN, a witness called for and on behalf of the National Labor Relation Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. SPENCER:

Q. What is your full name?

A. Everard M. Mann.

Q. What is your address?

A. 354 Ward Avenue.

Q. In Norfolk, Virginia?

A. Yes, sir.

Q. Mr. Mann, have you ever been employed by the Virginia Electric and Power Company?

A. Yes, sir.

Q. When did your services with the Virginia Electric and Power Company begin?

A. I believe it was the latter part of August 1936.

Q. In what capacity were you employed by the company?

A. Streetcar operator.

712 Q. Did you ever hear of any labor activity among the employees of the Virginia Electric and Power Company while you were employed at the company?

A. Yes, sir.

Q. When was the first that you heard of any labor activity among the employees of the company?

A. The first coordinated movement I heard anything about was April 19, 1937. It was the beginning of April.

Q. Just what was that?

A. They began to talk among the men and in groups of different men here and there about the raise in salary. They had not heard anything definitely as to whether they were going to get any, and they decided to see what they could do about get-

ting together in a group of their own and asking about it. But there was no coordinated effort made in that month to do so.

Q. When was the first coordinated effort made by the men to organize?

A. The first I recall was in May. The first meeting was approximately the second week of May. The meeting was held in the auditorium of the Transportation Building.

716 Q. What action was taken at this meeting?

A. In what way?

Q. By the men. What was the business that was conducted there at that meeting?

A. There wasn't much doing for a few minutes after Mr. Reutt opened the meeting, and nobody seemed to be willing to take the first part until Mr. Elliott got up.

Q. What did Mr. Reutt say?

A. It was along the same lines as Mr. Bishop. Mr. Elliott said the company would be glad to have the men get together and act in a collective bargaining way and they would be glad to have them take some steps at that meeting to see about it.

Q. After he had made the talk that you just described who got the floor?

A. Mr. Elliott got up and asked if he could not read a portion of the Wagner Act. He said he thought the men would like to know just where they stood in a case like that and

717 what they would be able to do.

Q. Just go ahead and describe what took place.

A. There was some dissent among the men. Some did not want to hear it and some did. I might say, I myself said I didn't think it would be a bad idea to let him read it; it would certainly help us to know just exactly where we stood. So they finally quieted down and Mr. Elliott began reading a part of the Wagner Act. When he sat down there was talk for a few minutes among the men. Nobody seemed to know just exactly where to start.

Q. Did you take any active part in the meeting?

A. Yes. I got up myself and spoke to the men. I spoke, I suppose, for about 15 minutes. I said that due to what Mr. Elliott had read we should try to learn that act and know just exactly what we are able to do and the conditions under which we can act and engage in any collective bargaining. I said I didn't think we should pay any attention to the way the company wanted us to do, and I don't believe in any union within a company having anything to do with the company; that it should be on its merits and that my own idea was that the safest thing to do would be to affiliate with an outside union of national

importance which would give us the backing to negotiate in matters we would like to negotiate.

718 I spoke on that subject for about 15 minutes, and told the men the one fact that was uppermost in everybody's mind; that the paramount idea to get rid of was not to be afraid to engage in any such thing; the company had invited them, and not to be worried about the fear of losing their jobs; that they should go on and do what they thought best; that they should have a vote taken on whether they wanted to go with an outside union, or whether they should have an independent union without any affiliation with anybody whatsoever; that I personally favored going out and joining the C. I. O., to be affiliated with them.

Q. Did any people present give you any support in your idea?

A. There was support and nonsupport. Fully one-third of the men agreed with me, according to the—by that I meant—well, find any word like. Some cheered, and some said, "Right." Perhaps the rest of them were on the other side.

Q. What else happened there at that meeting?

A. We decided to elect a committee of six, which was done by hand-raising.

Q. Did you attend any other meetings?

A. I attended the one in the afternoon.

Q. (Continuing) Of employees? You attended the one in the afternoon?

A. Yes.

719 Q. What took place at that meeting?

A. Approximately the same thing. I did not speak myself. Bob—I mean Mr. Elliott—was there and he told them what had occurred in the morning, and they named the six on the committee that had been appointed that morning by a hand vote and asked if anybody would like to elaborate upon it. They called out the names, one by one, and in the event they favored them they should raise their hands also, as in the first meeting.

Q. Now, Mr. Mann, you say you started to work for the company in 1936?

A. Yes, sir.

Q. Had you any experience in running a street car prior to the time that you started to work for this company?

A. No, sir.

Q. How long were you in training before a car was turned over to you?

A. Ten days.

Q. Now, from the time that you first got your car, did you have any accidents?

A. Yes, sir.

Q. When was the first accident that you had; can you recall?

A. The third day I was there.

Q. What was that, Mr. Mann?

A. I boarded a car in the morning. I had not been as-
720 signed to any particular car yet. My supervisor assigns the men who are breaking into a different car each day. I had not been assigned to any particular car. I was just going downtown and I got aboard a car going down Church Street, and I asked the man if I could take control to go down. He assented, and on the way down I hit the back of a truck.

Q. What happened?

A. I ran into the back of a truck.

Q. Did the company discipline you in any way for that accident?

A. The man whose car I boarded and myself both went up to Mr. Bishop. We are supposed to report to him anything like that. We reported just what had happened. It was my fault. The other man tried to take it on himself. Mr. Bishop listened to both of us, and remonstrated a bit and permitted us to go on.

Q. I have difficulty hearing you. Will you keep your voice up?

A. Mr. Bishop listened to both of us and debated upon it and decided to give us another chance.

Q. That was all the action that was taken in regard to that accident?

A. Yes, sir.

Q. Now, did you have any other accident than that?

A. Yes, sir.

721 Q. Will you relate the next accident you had and the action taken by the company?

A. I had several, but I could not remember them in rotation, how they happened. Several of them were very minor. I don't recall them.

Q. Were you ever disciplined for any accidents that you had by the company?

A. No more than to the extent of being held off three or four days.

Q. You were what?

A. I was not any more than to the extent of being held off from work three or four days.

Q. When did you have an accident that you were held off from work for three or four days?

A. I don't remember the date of the accident.

Q. Well, approximately.

A. I would say—I really forget; I don't recall. I think it was in December.

Q. Of what year?

A. Of 1936.

Q. Are you working for the company now?

A. No, sir.

Q. When did your services with the company terminate?

A. May 30, 1937.

Q. Prior to May 30, 1937, when was the last accident that
722 you had?

A. I believe it was three weeks to a month previous.

729 Q. Now, on this occasion, around the first of June or the latter part of May, you say a notice appeared on the board that you had been double checked?

A. That is right.

Q. To see Mr. Bishop. Now, did you go in and see Mr. Bishop as instructions on the board had it?

A. I did.

Q. When did you go in to see Mr. Bishop?

A. I believe it was on about the first of June, according to that date. I believe it was on a Monday when I first saw it. I went to see him then.

Q. Well, will you state just what transpired between you and Mr. Bishop when you went to see him?

A. I went up to his office and asked him if he wanted to see me; that I was double checked on the board, and so I came up.

He said, "Yes, sir."

I asked him, "What is the matter?"

He said, "I will have to let you go."

I asked him why.

And he said, "You have not been giving me the proper respect."

I asked him what he meant by that.

He said I did not call him Mr. Bishop.

730 I said, "I always speak of you as Mr. Bishop at all times."

He said he did not mean speaking to him personally; he meant—he said, for an instance, that I walked into the barn one day and asked a group of men, loudly, if they had seen Bishop; that he was sitting back of this dispatcher's desk, where I could not see him, and heard it. By that he seemed to infer that I was disrespectful to him, which was not the case at all.

As was stated before, over half the men never speak of him as anything but Captain Bishop. No disrespect whatsoever.

I asked him if that was the whole reason. I told him I could not very well accept that.

He did mention one other fact, which I do not think has any bearing on the case, but I will say it if necessary.

Q. Well, what was the other?

A. He said I had been telling a lot of men that I was going to borrow money from the company, which was not true. I had asked him a few days previous if it was possible for me to raise $50 before the next pay, and I did not need it particularly in any respect of shortage or anything. My sister, who was sick——

Q. Let us not go into the reason why you did not need it. Did you ask that?

A. Just stick to the reason?

731 Q. Yes.

A. Very well. I had asked a few days previous about it, and that is what he meant. I denied it. I said that I had not done it. I had not asked but a couple of men if it was possible to do that beforehand—if it was possible to borrow money that I needed the spot cash immediately.

I asked him was there anything else.

He said, "That is the entire reason."

I said, "I could not very well believe that," and left.

732 Q. After you had left the meeting of May 11th and up to the time you were discharged did you talk to and try to interest any of the other employees in joining or in getting the C. I. O. or the A. F. of L. to come in and organize the bus and car operators?

A. That all opportunities in conversation either with an individual or in conversation with several I backed the idea at all times in spite of the opposition from a lot of the men.

736 By Mr. Spencer:

Q. Mr. Mann, are you a member of any union?

A. Yes.

Q. What union?

A. The C. I. O.

Q. What is the C. I. O.?

A. What is it?

Q. Yes.

A. Do you mean its full name?

737 Q. I will withdraw that question. Are you a member of the T. W. U. Union?

A. Yes.

Q. What is the T. W. U.?

A. Transport Workers Union, affiliated with the C. I. O.

746 Cross-examination by Mr. Gibson:

Q. You say you addressed the meeting in support of the C. I. O.? Did that receive any support from the people present?

A. Quite a bit.

Q. You say that one-third of your meeting was warmly in support of your suggestion; is that it, approximately?

A. Going by the amount of applause, and whatever goes against applause; yes.

747 Q. I do not want you to be specific on it. You say there were 125 men present, in round numbers?

A. That is my idea generally. I think it was it, about.

Q. Some 40-odd of them expressed support of your suggestion?

A. Yes.

750 Q. Did you tell Mr. Bishop, when he notified you of your discharge, that you did not think union activities were a sufficient ground for a discharge?

The WITNESS. There was no mention of union activity at the time of my discharge.

By Mr. GIBSON:

Q. Mr. Bishop did not say you had been very active in the union, and therefore he was discharging you?

A. No.

751 Q. Did you say that was the reason?

A. Not to him.

Q. You said nothing to him on the subject?

A. No. I said I could not accept the reason he had given me.

Q. You did not insinuate that there was some other reason; did you?

A. If my words conveyed such an insinuation——

Q. You did not tell Mr. Bishop that he was acting for some other reason; did you?

A. No; I did not. I felt Mr. Bishop was simply carrying out orders as the instrument to do so from higher up. I had nothing against Mr. Bishop personally.

Q. Did you remind Mr. Bishop of Mr. Holtzclaw's bulletin of April 26th?

A. I did not.

754 Q. I take it the effects of a remark depends upon the
755 tone in which it is said as well as upon the words used. Isn't that true?

A. In some ways.

Q. Would it also be influenced by the situation and the number of people around?

A. It depends upon what the situation is.

Q. Is it customary in the transportation department for an employee to come to Mr. Bishop in the presence of a dozen or more other employees and refer to him loudly as "that guy Bishop"?

A. Such is not the habit of anybody.

Q. It would be exceptionable behavior? Is that true? You don't recall ever hearing anybody addressing him that way?

A. I don't recall ever hearing anybody addressing him that way.

756 Q. I asked whether such a remark under such circumstances would be exceptional conduct.

A. I don't think it would be exactly proper.

769 RAYMOND HUGH HOPKINS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. SPENCER:

Q. What is your full name, Mr. Hopkins?

A. Raymond Hugh Hopkins.

Q. Where do you live?

A. 241 Ethel Avenue.

Q. Are you appearing here in this proceeding after having been served with a subpena?

A. Yes.

Q. Mr. Hopkins, where are you employed?

A. Virginia Electric & Power Company.

Q. How long have you been employed there by the Virginia Electric & Power Company?

A. About eight and a half years.

Q. Were you employed by the Virginia Electric & Power
770 Company around April 1937?

A. I was.

771 Q. And was there a meeting at the Y. M. C. A.?

A. Yes; there was a meeting called at the Y. M. C. A. I believe the first meeting at the Y. M. C. A. was May 11th.

Q. Did you attend that meeting?

772 A. I did.

Q. Did you see any person in a supervisory capacity present?

A. I do not recall whether it was at that meeting or the meeting of a later date that Mr. Bishop made a little speech before the men; but at the first meeting—I don't know whether he was considered in a supervisory capacity or not—Fields was acting as the dispatcher.

Q. Who was?

A. Mr. Fields was acting as the dispatcher. He was at the first meeting, and Mr. Williford, but Mr. Williford left after. I believe, Mr. Elliott came in and asked Mr. Williford would he leave.

Q. Now, after that meeting, when was the next thing that you heard in regard to union activity or any meetings that you might have attended?

A. I believe after that morning meeting—it seems that Mr. Mann got up and suggested something about joining an outside organization, and right after the meeting I went down town and met Mr. Crum, who is in here representing the C. I. O., and I signed a C. I. O. card between the morning meeting and the afternoon, and I didn't get back to the afternoon meeting, and I believe the next meeting took place—I can't say exactly. I was more interested in the organization of the C. I. O. than I was in this meeting up there at the Y.

773 Q. When you joined the C. I. O., did you take any active part in getting other employees of the Virginia Electric and Power Company to join?

A. Yes, sir.

Q. Did you have any application cards in the C. I. O.?

A. Oh, yes. I had quite a number of them.

Q. Did you get any of the employees of the Virginia Electric and Power Company to sign such cards?

A. Yes, sir.

Q. Do you know Mr. J. P. Bush?

A. Do I know J. P. Bush?

Q. Or Brush?

A. J. P. Brush?

Q. Yes.

A. P. J. Brush.

Q. Did you talk to him about joining the C. I. O.?

A. I did.

Q. Where is Mr. Brush employed or where was he employed at that time?

A. He was employed and still is employed by the Virginia Electric and Power Company.

Q. In what capacity?

A. Bus operator.

Q. Where did you see Mr. Brush?

A. I don't recall exactly. I believe it was at a meeting
774 that was being conducted in a half of a restaurant that was vacant there, known as the New Virginia Cafe.

Q. Did you ask Mr. Brush to join the C. I. O.?

A. I did.

Q. What response did you get to your invitation?

A. He joined.

Q. Did you see Mr. Brush at any time after you gave him the card and he had signed it up?

A. He came to me several days later and told me he wanted to withdraw his card.

Q. Did he give you any reason for wanting his card back from you?

A. Yes. It was in regard to a conversation that he and Mr. Edwards had in the New Virginia Cafe the night before.

Q. Did he state what the conversation was?

A. Yes. He did say he didn't want to belong.

775 Mr. Brush came to me and told me he would like to have his card back. He said he understands from Edwards that we were going to put him and Mr. Bishop in the penitentiary for trying to break up the C. I. O., and he didn't want to have anything to do with an organization that would do that. I tried to explain to Mr. Brush that there was nothing in that, that they had just started it around to keep him from joining. I didn't give him his card back at the time. He had to come up to the office, and I believe it was returned to him through Mr. Crum, who was the C. I. O. representative.

By Mr. SPENCER:

776 Q. You know Mr. Edwards, do you not?

A. I do.

Q. Were you in the New Virginia Cafe in the latter part of May 1937?

A. I don't know whether it was the latter part of May or the early part of June. It was somewhere along in there.

Q. Along about that time did you go into the New Virginia Cafe and see Mr. Edwards in the Cafe?

A. I did.

Q. Did you have anything to say to Mr. Edwards on that occasion?

A. Well, I sat down at a counter and ordered up a slice of pie and a glass of milk. By the time I had started to eat he was talking to Brush at that time. At the time I started to eat my pie he swung around to me and said, "There is that son of a bitch that is causing all of the trouble around here. He is talking about putting me and Mr. Bishop in jail. I could put that son of a bitch in jail if I wanted to."

There was some police officer standing up. He said I ought to hit him. I said I didn't want to get locked up and lose my job.

777 He said, "Do you know what this is all about?" I said, "Yes; something in regard to the union, and that is the reason I have to take it." I said, "You would lock me up anyway if I did hit him."

He said, "It is a powerful lot to take."

Q. Do you know the police officer?

A. I do.

Q. Do you know his name?

A. No.

Q. Do you know whether or not he is a police officer in the City of Norfolk?

A. Yes, sir.

Q. Do you know whether or not he had a number?

A. I don't know his number. I know him when I see him, because I have talked to him several times.

Q. Mr. Hopkins, a little while ago you mentioned that on May 11th you went over after the meeting in the company Y. M. C. A. and joined the C. I. O.?

A. Yes, sir.

Q. At that time did you join the T. W. U. union or the Transport Workers Union?

A. Mr. Crum was the general organizer for the C. I. O., which is the Committee for Industrial Organization. They were in here and they signed up men in any branch of the work, and then that group of men, as soon as it starts functioning,
778 is turned over to which ever union they are supposed to be in, which is the T. W. U. in this case.

Q. After you had signed up a group of the car operators and bus operators, did you form a local of the T. W. U.?

A. Yes. We called a meeting at No. 804 Bankers Trust Building and the officers were elected

Q. Did you ever receive a charter?

A. We did.

Q. Do you know where that charter is now?

A. At my home.

Q. Are you still a member of the T. W. U.?

A. Yes, sir.

Q. Would you like to enter your appearance for the T. W. U.? I will strike that question. Have you been here at this meeting all of the time?

A. No; not all of the time, but I have down for a little while pretty nearly each day it went on.

Q. You knew that this hearing was going on here?

A. Yes.

Q. Do you hold any office in the T. W. U.?

A. No, sir.

Q. In the local?

A. No, sir.

Q. I believe that is all.

779 Cross-examination by Mr. WHITE:

Q. Did you attend the meetings of the I. O. E. prior to the time that the permanent officers were elected in July 1937?

A. Where was the meeting being held?

Q. I say any of the meetings of the steering committee of the I. O. E.?

A. The only meeting I attended was the one at the Blair Junior High School, I believe.

Q. You were there at that meeting?

A. Yes, sir.

Q. After that time when was the next meeting, if any, of the I. O. E. that you attended?

Q. When did you joint the I. O. E.?

A. The first part of November.

Q. And you are now a member of that organization?

A. I have to be.

Q. Did you make any statement at the meeting at the Blair Junior High School?

A. No, sir.

Q. You did not?

A. No, sir.

780 Q. Mr. Hopkins, it has been pretty well known, according to your testimony, since May that you were a member of the C. I. O., hasn't it?

A. Yes, sir.

Q. You are still employed by the Virginia Electric and Power Company?

A. Yes, sir.

Q. You enjoy all of the privileges of any other members of the I. O. E., don't you?

A. Do I enjoy what?

Q. All of the privileges under the contract?

A. Oh, yes, sir.

Q. Has the organization in any way ever tried to interfere with your membership in the C. I. O.?

A. No. The organization had their representatives tell me what was going to happen to me for belonging to it.

Q. The representative of the I. O. E.?

A. Mr. Hough. I guess he is the representative.

Q. What did he tell you?

A. That some time I would wake up and find out I was sorry I had anything to do with the C. I. O.

Q. He did not make any threats or anything of the kind?

A. No.

Q. He was just arguing with you?

A. Yes.

Q. That was all it was?

781 A. Yes.

Br. Mr. MOORE:

Q. Mr. Hopkins, who are the present officers of the C. I. O. local that you have a charter for?

A. R. E. Elliott is President.

Q. Is he still the President?

A. Yes, sir.

Q. Who else?

A. Mr. Phillips; although I don't know his first name or initials, but I think it is H. M. Phillips. He is Vice President.

Q. Does he work for the Virginia Electric and Power Company?

A. Yes.

Q. Who is Vice President?

A. J. Emmitt Smith.

Q. J. Emmitt Smith, you say?

A. Yes.

Q. What is he?

A. Financial secretary.

Q. H. M. Phillips is Vice President?

A. Yes.

Q. What is J. Emmit Smith?

A. Financial secretary, I believe. Now, just a minute. Well, yes; he is financial secretary. And Mr. B. E. Twiford
782 was President, and Mr. Duke, whose initials I don't know, was elected. Well, it was a treasury position. In other words he is the man who has to draw all of the checks for the union, whatever the office was. It was so long ago that I don't remember exactly what it was.

Q. You joined on May 11th, the day that first meeting was held?

A. Yes, sir.

Q. How many of the men now in the service of the Power Company are members of your local, approximately?

A. Around 140.

Q. You say about 140?

A. Yes, sir.

Q. Did you ever join the Amalgamated?

A. I did.

Q. What was the date you joined the Amalgamated?

A. I believe it was in March.

Q. In March of this year?

A. It was March or April. I don't remember the date.

Q. March or April of this year?

A. I have the card in my pocket. If I can find it I believe it will give the date of it.

Q. That is close enough. It was either March or April?

A. Well, I don't have the exact date. I joined it some time the first part of this year.

783 Q. Who are the officer of the present A. F. of L. of which you are a member?

A. LeRoy Adkins is president; J. M. Smith is financial secretary.

Q. Is that the same Mr. Smith you was financial secretary of the C. I. O.?

A. Yes.

784 Q. Without giving any names—I don't care to go into that—how many employees of the company are members of the Amalgamated?

A. I can only say I do not hold office in that. Mr. Smith has the records. I cannot answer anywhere near correct as to how many members they have.

Q. Could you give it to us approximately?

A. The last time I knew anything about it there were around 75. And that was around the latter part of March, I would say.

785 Q. Were you ever threatened with discharge or did you have trouble any superintendent or person in the management because you went into the C. I. O. or the A. F. of L.?

A. The only man who seemed to bother me any at all was Mr. Edwards.

Q. That was on that particular occasion?

A. No; on several occasions. He seemed to take a delight in riding me whenever he had a chance. He was the only supervisory official who ever said anything to me. He told me I

786 wouldn't last long if I didn't drop it the first day I started. I think that was on the 12th. I signed up on the 11th. Him and I had been friendly with each other before. He got a whiff of it and he came to me on the 12th or 13th.

By Trial Examiner Fort:

Q. Of what month?

A. He said he heard I belonged to the C. I. O. I said they authorized me to sign up the men up there, or as many as I could, and they gave me a pack of cards. He asked me to let him have one, so I gave Mr. Edwards a card. And he said, "Maybe I can help you out. I think I know somebody who might sign."

I never had any reason in the world for not believing him, after being new in organization and all, and I didn't stop to think, so I let him have it. About thirty minutes later Mr. Crum I talked to and he told me Mr. Edwards was a supervisor and he had no right to have a card; that he couldn't use it, and to try to get it away. So I went to Mr. Edwards and asked him for this card. He said he had left it at home on his dresser. I had an idea that it was still around the car barn. I didn't

know where he h[illegible]? That was all there was to that, except that I imagine it was later on in the afternoon one of the men told me he just heard Mr. Bishop in there telling somebody
787 that I was out signing up men in the C. I. O. and getting $2 for it and that I had cards, and he had a card. That was the only card I knew of that got out of my possession at that time, that is, that one.

789 Q. You say this man Edwards is an inspector?

A. Supervisor.

Q. What does he do?

A. Well, he goes on the road and changes the schedule; turns you back if you are late, or puts you on another run, or has you relieved if you do anything wrong.

791 E. L. KING, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Mr. MOORE. What are your initials, Mr. King?

The WITNESS. E. L. King.

Direct examination by Mr. SPENCER:

Q. Where do you live, Mr. King?

A. 2943 Argonne Avenue.

Q. Norfolk, Virginia?

A. Norfolk, Virginia.

Q. Where are you employed, Mr. King?

A. I am employed by the Virginia Electric & Power Company, mechanical department, on 18th Street.

Q. How long have you been employed by that company?

A. I have been employed by the Virginia Electric & Power Company now almost five years. It will be in September.

Q. Are you appearing here after having been served with a subpena?

A. Yes; I was served with a subpena.

Q. Who is your immediate superior, Mr. King?

A. Mr. J. W. Cole.

Q. Have you ever learned that there was any group of men organizing the employees of the V. E. & P. Co.?

792 A. Yes; I learned that there was activities on toward organizing the men. There was a bulletin on the board in the dispatcher's office, which I read, signed by Mr. Holtzclaw. In fact, it has been mentioned before in this hearing.

Q. After you read this bulletin, what was the next thing you saw or heard in regard to union activities amongst the men?

A. Well, the next thing that I noticed was when—I don't remember whether it was on Tuesday, but it seems to me it was—nevertheless, I walked into the dispatcher's office on my way up to the Y. M. C. A., and I saw posted in the dispatcher's office

two or three notices, announcing a meeting to be held in the Y. M. C. A. on a certain date, which I don't remember—one in the morning and another one in the afternoon.

Q. Did you attend either of those meetings?

A. I was at the morning meeting; the first meeting they had.

Q. Did you see any persons there who were in a supervisory capacity?

A. Well, I don't recall that there was any—any officials, other than Mr. Williford. I was in the poolroom at the time, shooting pool, when the meeting was called, and when I came out into the room where they were meeting at, I noticed Mr. Williford being there when Mr. Elliott asked him to leave.

Q. Did you hear Mr. Elliott's speech?

793 A. Yes, sir.

Q. Did you hear anybody else talk there at that meeting?

A. Yes, sir.

Q. Whom else did you hear talk?

A. I heard Mr. Mann, Mr. Ruett, and quite a number of others that I can't remember.

Q. Will you state, in substance, what Mr. Mann had to say on that occasion?

A. Well, he was very much opposed to the idea of an independent union or any union that was dominated by the company, and seemed to be in favor of a bona fide union, that is, a union outside, and he made quite a speech regarding that, and, as a matter of fact, he told several of them there—he pointed his finger to them, in fact—it was a bugaboo to them; they were afraid to get up and say what they wanted, because they were afraid of their jobs.

798 Q. Well, did you ever attend a meeting at which time Mr. Cole spoke to the employees?

799 A. I beg your pardon. I thought you were referring to the I. O. E. meeting. Yes; he held a meeting over in the bus garage.

Q. In the V. E. P. Company bus garage?

A. Yes, sir.

Q. Were you present on that occasion?

A. I was present at one meeting.

Q. Well, will you state what time of day or night that meeting was held?

A. I don't recall the date, and it would be hard for me to recall the approximate date. So many things happened at that time and since then that it is hard to remember. It was about between 10:30 and 11:30 o'clock, because I go to supper at 11:20, and he called a meeting of the employees that night, and we assembled in this bus garage.

Q. Were you there at the time he called the meeting?

A. Yes, sir.

Q. Go ahead and tell us what was said.

A. To the best of my recollection, he made a statement that he could not talk but just so much; that he did not want to go to Atlanta. Now, I think he was referring to the Wagner Labor Act, which prevented him from talking like he would have liked to talk.

He did not want to go to Atlanta, but he could beat around the bush. He said, "I am going to beat about the bush": and he went on and said we men—it is not necessary for us to go out and join a union in order to get more money: but the transportation department never paid much money and never would, and he said it was not necessary that we should go out and pay some fellow to sit back and take it easy: someone we did not know.

Q. Mr. King, did you join the I. O. E.?

A. Yes, sir.

Q. When did you join the I. O. E.?

A. To the best of my recollection it was some time in August. It was in August, if I am not mistaken. I am not positive about that. But I was about the last one of the mechanical department to join.

Q. Did you join before or after the contract between the I. O. E. and the company was signed?

A. I would not like to be definite, but, if I remember correctly, I think it was just before the contract was signed. I wouldn't be definite on that.

Q. Where did you sign your application card into the I. O. E.?

A. I was at the car barn.

Q. At the car barn?

A. Yes.

Q. Was it during working hours?

A. Yes, sir.

Q. When you say the car barn, that is the company property?

A. Yes.

Q. Who solicited your membership?

A. Mr. Hall brought the cards. He brought a bunch of cards to me one evening as I came on duty and he asked me to get those cards signed by the night men. So I taken the cards, and the men in my department, that is, the mechanics up there, signed that night. They signed during the first part of the night. The colored car cleaners came in at 8:30 and they signed during the night.

809 Q. Did any person in a supervisory capacity say anything to you, or were you disciplined in any way for soliciting your fellow employees during working hours to join the I. O. E.?

A. There was nothing said in regard to my signing those cards during working hours, but after my activities started again against the I. O. E., Mr. H. F. Saunders, my foreman, one night called me around the back of the maintenance of way building, and we sat down on the steps of a street car. He says, "King, I told you enough—I have talked to you enough about your talking too much."

He said, "This is the last time I am going to tell you"——

Q. Wait just a minute. My question was: Were you reprimanded or in any way disciplined for your activity in getting the I. O. E. cards signed up during working hours on company property?

A. No, sir; not by any official.

Q. Now, after you had gotten the I. O. E. cards, I take it from your testimony that you became active in the Amalgamated or the American Federation of Labor at some later date; is that correct?

A. Yes, sir; at a later date that—much later.

Q. And did you ask anyone to sign Amalgamated cards?

A. Yes, sir; I have asked quite a few people to sign them.

Q. Did anybody in a supervisory capacity reprimand
810 you, or were you disciplined in any way for your activity in the Amalgamated?

A. No, sir; other than the conversation that Mr. Cole and I had in there. He told me he heard I had been quite active. That was the only conversation we had in reference to my activity in the Amalgamated.

843 Mr. Moore. Mr. Examiner, on behalf of the Respondent we desire to make a statement with regard to the preparation of a statement in regard to grievances in compliance with your request. We have prepared such a statement in line
844 with your suggestion, without any consultation with counsel or any representative of the I. O. E. So there may be some matters in this statement that we may not have treated as official grievances that they have or vice versa. We have undertaken here to present all matters that were considered as grievances by the Respondent whether official or unofficial. We have simply presented substantially the whole story with regard to each one.

845 **Trial Examiner Fort: It might as well be received in evidence at this time as a Respondent's Exhibit.**

Mr. Moore. We will offer it, then.

Trial Examiner Fort: It will be received as Respondent's Exhibit No. 8.

(The document above referred to was received in evidence and marked "Respondent's Exhibit No. 8.")

848 THEODORE FREDERICK REITZINGER, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. SPENCER:

Q. What is your name?

A. Theodore Frederick Reitzinger.

Q. You mean you are what is commonly known as a policeman?

A. Yes; that is right.

Q. In the city of Norfolk?

A. Yes, sir.

Q. How long have you held that position?

A. About ten years.

Q. Were you working in that capacity around May of last year?

A. I was.

Q. Do you know Mr. Hopkins?

849 A. I know a lot of them but not by name. If he stands up I might know him.

Trial examiner FORT. Is Mr. Hopkins here?

(No response.)

By Mr. SPENCER:

Q. Do you know a Mr. Edwards, an employee of the Virginia Electric and Power Company?

A. I believe he is a superintendent.

Mr. MOORE. He is a supervisor. Let's don't get superintendent mixed up with supervisor.

The WITNESS. Then he is a supervisor.

Mr. MOORE. That is right.

By Mr. SPENCER:

Q. Did you see Mr. Edwards in a restaurant on your beat about May a year ago?

A. I did.

Q. Will you state just exactly what took place in the restaurant there on that occasion?

A. I went in there. To the best of my knowledge, I was working from three o'clock to eleven o'clock. I went in there to get something to eat. It was somewhere between six-thirty and seven-thirty, I should say. While I was eating there Edwards came in there. There were several bus drivers there and streetcar men who were in there.

Mr. Edwards came in and wanted to treat me to a bottle of beer. I told him I couldn't drink it right then because I was

on duty. Some discussion came up about the union. I
850 didn't pay much attention to it. And Mr. Edwards said, "They are trying to put me and Mr. Bishop in the penitentiary, but I am going to show them I am going to put them in the penitentiary."

There were two men there particularly he was talking with and they were arguing back with him. I told them to keep quiet. I told Mr. Edwards, "I wouldn't have no argument here, but go on and go out. Wait anyway until I get away from here. I hate like the dickens to lock any of these boys up. I know them and have been knowing them a long while."

So I went up to the corner and an argument started down there and I had to threaten I would lock some of them up if they didn't stop their argument.

Q. When you say some of them, whom do you mean?

A. I judge about eight or ten of them there.

Q. Do you know the names of them?

A. No. There are only a few of the names I know.

851 And one man—Mr. Edwards, was back in the restaurant again, and there was one man leaving the restaurant. He left this Virginia restaurant and went over to the Crystal Restaurant, and Mr. Edwards followed him over there, and he got arguing with him, and finally I called the station up. I forget whether it was Sergeant Messick or Sergeant Outlaw, at that time he came on down there, and things were pretty quiet then. He told me to stay right around there until things kept quiet, and he said, "If there is any more uprising or any more arguments, bring them on in."

Q. Now, did you hear any person there in the New Virginia Cafe use profane language?

A. Well, there was some cussing going on there.

Q. Who was doing the cussing?

A. Well, they were all cussing.

Q. Did you hear Edwards do any cussing?

A. He said some cuss words.

Q. Do you know whom he was directing that cussing at?

A. No; I couldn't say any individual one.

Q. Did you make a remark on the outside, asking one of the men why he did not hit Mr. Edwards?

A. Yes; I made that remark. I told him—I said, "If it is true," I said, "Why, I would make him prove it," and I says, "If he couldn't prove it, if it would be me, I would take a poke at him."

852 Q. What did he tell you; did he makes any reply to that statement?

A. He didn't want to get in no trouble. Of course, it has been a long while ago, and I forget a lot of the stuff that was said up there. I can't remember everything. I have a lot of cases.

858 Cross-examination by Mr. MOORE:

Q. So that they were having an argument between those men, independent of Mr. Edwards?

A. No argument started until Mr. Edwards came in.
859 He started it. He started this thing. He asked me to have a beer, and I told him I couldn't drink any then. Then he got talking to these fellows, trying to put him and Mr. Bishop in the penitentiary. He said he was going to put them in the penitentiary.

861 Redirect examination by Mr. SPENCER:

Q. After seeing Mr. Hopkins here, do you recall whether or not Mr. Hopkins is the man you made the statement to, "Why don't you hit him?"

A. That is the man right there.

By Trial Examiner FORT:

Q. Which one? The man on the right?

A. The one right there, standing up now.

Q. The one nearest the street?

A. Yes.

Mr. SPENCER. That is Mr. Hopkins, for your information.

By Mr. HOPKINS:

Q. And what had Mr. Edwards said or done to Mr. Hopkins to warrant you to make the statement, "Well, why don't you hit him"?

A. He was cussing him.

862 Q. Well, what did he say? Give us the exact words as near as you recall.

A. He called him a son-of-a-bitch, and fuck you, words of that kind. That is when he called him a son-of-a-bitch, I said, "If he called me that I would hit him."

Q. And what did Mr. Hopkins say?

A. He did not want to get into any trouble.

Q. When he called him a son-of-a-bitch, did he use C. I. O. or A. F. of L.?

A. No; he did not. He did not use C. I. O. then.

Q. When did he use C. I. O.?

A. That was before and afterwards. That is when, I think, he started with Mr. Hopkins there, and he says, "All you C. I. O. people," and then the argument really did beat up then at that time.

Q. Mr. Edwards started all the trouble there that night, is that correct?

A. Yes, sir.

864 JOSEPH BOLTON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

866 By Mr. SPENCER:

Q. Now, when you joined the C. I. O., or the Transport Workers, what, if anything, did you do in regard to activity in that organization?

A. Well, I joined the C. I. O. in the old Restaurant on 18th Street, and a few days afterwards I go into the dispatcher's room to get my run, and the dispatcher, he says, "Here comes another C. I. O. man He won't be here long."

So I says——

Q. Now, wait. Can you give us the name of that dispatcher, if you can recall it?

A. Mr. Caton.

Q. All right. Go ahead. I just wanted to get his name.

A. So I was kind of scared of the job. I said, "I am not a C. I. O. man."

He said, "Oh, yes, you are. I have a list of the names."

867 So I did not say any more. I walked out, and kept on going.

Q. Did any other person approach you about your activity and membership in the C. I. O.?

A. No; he was the only one that mentioned anything about it.

Q. Did you join any other labor organization?

A. Then afterwards I joined the A. F. of L.

Q. When did you join the A. F. of L.?

A. I think it was somewhere around November or Dece...ber; somewhere around there; I am not sure.

Q. Now, when you are speaking of the A. F. of L., you mean the Amalgamated?

A. No; the transportation.

Q. Yes; the Amalgamated.

Q. Now, did you join the I. O. E.?

A. Yes, sir.

Q. When did you join the I. O. E.?

A. In the latter part of May or early in June, in '37.

JESSE M. SMITH, a witness called by and on behalf of the
887 National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. SPENCER:

Q. What is your full name, Mr. Smith?

A. Jesse M. Smith.

Q. Where do you live, Mr. Smith?

A. 1444 Decatur Street, South Norfolk.

Q. What is your occupation?

A. Bus operator.

Q. I didn't get that?

A. Bus operator.

Q. For what company?

A. For the Virginia Electric & Power Company.

Q. In what city do you operate?

A. In Norfolk.

888 Q. When was the first time, or what was the first that you ever heard in regard to labor activities of the employees of the V. E. & P. Co.?

A. The first that I knew of it was a notice posted in the dispatcher's office out in the car barn on 18th Street of a meeting to be held in the Y. M. C. A.—over at the dispatcher's office.

Q. Did you attend that meeting?

A. Yes, sir.

889 Q. Did you attend that meeting?

A. Yes.

Q. Did you see any persons in a supervisory capacity at that meeting?

A. No, sir.

Q. After that meeting what was the next thing you saw with regard to any labor activities of the Virginia Electric and Power Company employees?

A. That was the only meeting I attended of any of the meetings around there except a meeting held at the Blair High School.

Q. You attended the meeting at the Blair Junior High School?

A. Yes.

Q. Between the time of the meeting of May 11th at the Blair Junior High School did you have any discussion where the labor activities of the Virginia Electric and Power Company employees were discussed between you and a person in a supervisory capacity?

A. At times after they started to organize in the Independent union I have had one of the supervisors talk to me about it.

Q. Will you tell us the name of that supervisor?

A. Mr. Edwards.

Q. Where did you see Mr. Edwards and under what circumstances did the conversation take place?

A. I don't remember exactly where, but it happened on several occasions.

890 Q. Can you relate just what was said on those occasions?

A. It was several times, and mostly a sarcastic remark was made with regard to the union, the C. I. O., and that we were going to keep messing with the C. I. O. until we lost our jobs and would be out on the street looking for work, and such as that.

Q. Can you give us the approximate date on which these conversations you had with Mr. Edwards took place?

A. No, sir; I cannot.

Q. Can you give us the month?

A. It was sometime after the meeting up in the Y. M. C. A. the 11th of May.

Q. It was some time in between the 11th of May and June 22nd? Is that right?

A. Yes; and after June 22nd.

Q. Both before and after?

A. Yes, sir.

891 Q. Will you please proceed to relate just what took place there?

A. I turned to look back in Mr. Bishop's office as I started down the steps and he motioned for me to come back in the office. I think he did; I don't know whether he did or not. I went back and asked him if he called me, and he told me to come in. Then he asked me what I thought of the organization. I didn't know what to tell him because I hadn't given it much thought. He said we could do much better with an Independent Organization than we could with an outside organization. He told me we could charge about 25 cents a member, which would give us around seven or eight thousand dollars a year, which would be sufficient for attorney's fees and stationery and hall rent and such as that.

Q. On that occasion did he show you any documents or papers?

A. He had a Wagner Labor Act pamphlet in his
892 drawer, I believe, that he took out, and he read the part in there that we had the right to organize for collective bargaining.

Q. About that time do you know whether or not there was any national or international labor organization here in the City of Norfolk attempting to organize the Virginia Electric and Power Company employees?

A. At that time I didn't know for sure that there was. I had heard that there was a representative from the C. I. O.

Q. Do you know what union connected with the C. I. O. that was?

A. Transport Workers Union.

Q. Did you attend a meeting at the New Virginia Cafe on or about June 1, 1937?

A. I did not go to the meeting. I was not allowed to go in because I was not a member of the I. O. E.

Q. Will you describe the interior of the New Virginia Cafe where the C. I. O. meeting took place?

A. The interior of the building?

Mr. WHITE. Just a minutes, please. I was wondering if I misunderstood the last answer.

Trial Examiner FORT. We got the initials mixed up or the answer does not jibe with the question.

Mr. SPENCER. I meant to say the C. I. O. in both.

Trial Examiner FORT. He said he was not a member of the I. O. E.

893 The WITNESS. That is what I said.

By Trial Examiner FORT:

Q. Do you mean you were not a member of the I. O. E.? You said you were not permitted to go into the meeting because you were not a member of the I. O. E.?

A. Yes: I said that.

May I ask which organization you have reference to that was holding a meeting there?

By Mr. SPENCER:

Q. I mean the C. I. O.

A. Yes.

Q. Did you attend the meeting?

A. Yes.

894 Q. Do you recall whether or not anybody was on the outside of the building noticing the people went in and came out of the restaurant?

A. Across the street there is another restaurant known as the Crystal Restaurant. It has benches out in front. Inspector Edwards was out there from early in the morning until late in the evening. Where he stayed there all day or not I don't know. But we had two meetings. He was there at the morning meeting and he was there at the evening meeting.

Q. What time of day was the morning meeting?

A. As nearly as I can remember it was around nine-thirty or ten o'clock.

Q. What time was the afternoon meeting?

A. About four o'clock. I believe.

895 Q. Do you know whether or not Inspector Edwards talked to any of the men going in or coming out of the meeting?

A. Yes, sir.

Q. Did he talk to you?

A. No, sir.

Q. Is it a common or uncommon occurrence for a person in the capacity of Mr. Edwards to stay in a position, such as he was doing that day, for that long a period of time?

A. No. It is a very uncommon thing for him to do that.

Q. What was your answer?

A. They don't generally do it.

899 Cross-examination by Mr. WHITE:

Q. As a matter of fact, you are financial secretary of the Amalgamated, aren't you?

A. Yes, sir.

900 Q. And weren't you financial secretary of the old C. I. O. local which was here?

A. No, sir; recording secretary.

Q. You were recording secretary of that?

A. Yes, sir.

Q. Have you ever attended any meetings of the I. O. E. voting section? I mean not the general meeting but just of the voting section.

A. You mean when they were holding a vote?

Q. No; I do not mean when they were holding a vote; I mean a meeting of the members of the bus section.

A. No, sir.

Q. Have you participated in any of the votes that have been taken on a serious matter that may have come up?

A. The only one that I recollect attending was the vote that was held on 18th Street in the Crystal Restaurant across from the V. E. P. bus garage.

Q. And that voting was on what?

A. Seniority system.

Q. You did not take part in that?

A. No, sir.

Mr. WHITE. I have no further questions.

Cross-examination by Mr. GIBSON:

Q. When did you become a member of the C. I. O.?

901 A. Some time between the 11th of May and the 15th of May; I don't remember the exact date.

Q. That was just about the time that you talked to Mr. Bishop, wasn't it?

A. That was after I talked to Mr. Bishop.

Q. Mr. Bishop read you the provision of the Wagner Act which says that employees shall have the right to self-organization, is that right?

A. That is right.

Q. So he left the impression on your mind that you could do what you wished?

A. That is right.

Q. And you did do what you wished; didn't you?

A. That is right.

902 Q. When did you become a member of the A. F. of L.?

A. I could not give you the exact date on that.

Q. Well, was it last year or this year?

A. This year.

Q. 1938?

A. That is right.

Q. Your action was not affected at all by what you say was Mr. Edwards' sarcasm, was it? You were not deterred from joining both of these unions because of his sarcasm, were you?

A. I don't understand.

903 Q. You say Mr. Edwards talked to you some time in June 1937.

A. Yes, sir.

Q. And you also said that he made some sarcastic comments about the union.

A. That is right.

Q. Did that prevent you from joining any union as freely as you chose?

A. No.

Q. Will you tell us about when it was that you saw Mr. Edwards in front of the Crystal Restaurant, on the bench there on the sidewalk?

A. It was the first meeting that the C. I. O. held in the restaurant across the street known as the Virginia Restaurant.

Q. You know better when it was than I. When was that?

A. I don't remember the date exactly. It was some time in May.

Q. In May.

A. After the meeting in the Y. M. C. A. of the 11th.

Q. And that was just the season for people to sit outdoors?

A. Yes; that is right.

904 Q. Both of these two restaurants are pretty near the car barn?

A. Across the street from each other.

Q. And it is the custom for people to go there for soft drinks and things to eat?

A. Sure.

905 By Trial Examiner FORT:

Q. Mr. Smith, how often did you see Mr. Edwards sitting out at this place?

A. On this particular day that we had this meeting in the Virginia Restaurant was the only day that I remember seeing Mr. Edwards sitting out there for any length of time. He doesn't generally hang around the barn.

Q. Was he there a considerable time that day?

A. Yes, sir.

Q. About how long would you estimate?

A. The meeting started, as I said, about 9:30 or 10 o'clock, and he was there on through until around noon.

906 Q. Have you seen any statements from the company or Mr. Edwards or Mr. Bishop changing the attitude expressed by them to you in the conferences, about an outside union?

A. The only thing of that kind I have ever seen was when Mr. Holtzclaw had posted a notice on the board there.

Q. Was that before or after these statements?

A. That was before any organization was started there.

Q. Then, that was before these statements were made to you by Mr. Bishop and Mr. Edwards?

A. Yes.

Q. And Mr. Edwards and Mr. Bishop are now with the company?

A. Yes, sir.

Q. Are they occupying the same positions that they had at that time?

A. Yes, sir.

Trial examiner FORT. I have no further questions.

Mr. SPENCER. I have one or two questions.

Mr. GIBSON. Before you continue, I would like to ask a few questions along the line that has been brought out by the Trial Examiner. I do not know whether I should follow you or precede you.

Trial Examiner FORT. Suppose you let him go ahead first.

Mr. SPENCER. All right..

By Mr. GIBSON:

Q. Would you be able to deny that Mr. Edwards is on
907 the benches in front of the Crystal Restaurant every morning between 9 and 10 o'clock, unless it is raining?

A. No; I couldn't say, because I don't hang around the barns myself.

Q. That might be his regular habit without your knowing anything about it?

A. I don't think it is his regular habit; no, sir. I can't recall him sitting like that there before.

Q. His job is inspector; is it not?

A. Yes; on the street—inspector on the street.

Q. You say you saw Mr. Holtzclaw's bulletin, dated April 26th, I think, it was—do you?

A. I saw the bulletin. I don't know the date; no, sir.

Q. It is Board's Exhibit No. 3. I hand you Board's Exhibit No. 3. Is that the bulletin that you saw and referred to [handing the exhibit to the witness]?

A. Yes, sir.

Q. You say you saw that before your conversation with Mr. Edwards?

A. That is right.

Q. I hand you Board Exhibit No. 12, which was posted by Mr. Holtzclaw, dated June 24, 1938. Would you look at that and tell me whether you saw that posted [handing the exhibit to the witness]?

A. Yes, sir.

Q. You say you did?

908 A. Yes, sir.

Q. You will note that the last paragraph says that the employees of the company have the right to self-organization, and so forth, and the company has not sought and does not seek to interfere in the exercise of their right. I am abbreviating it, but you see the whole text. Did you see this after your talk with Mr. Edwards and Mr. Bishop?

A. I can't say that I did, and I can't say that I did not. I don't remember. I don't remember just when that was posted.

Q. Did you not say that your talk with Mr. Edwards was before the meeting at the Blair Junior High School?

A. Yes, sir.

Q. I think the record will show that—in fact, I think counsel said the meeting at the Blair Junior High School was on June 22nd, and this was on June 24th.

A. Yes.

Q. So you saw this after your talk with those two men?

A. Yes; that is right.

Mr. SPENCER. What exhibit were you reading from?

Mr. GIBSON. Board's Exhibit No. 21.

909 By Trial Examiner FORT:

Q. I understood you to say, Mr. Smith, that Mr. Bishop had the Wagner Act there on his desk, and referred to it two or three times.

A. Yes, sir.

Q. And that he told you that you had a right to elect whatever organization you wanted?

A. Yes, sir.

910 Q. And he also told you which one he thought was best?

A. He showed me that we could organize much cheaper in an independent organization than we could an outside organization.

Q. Then, in view of that attitude of Mr. Bishop and of Mr. Edwards, how did that fit in with this bulletin of Mr. Holtzclaw; what impression did that make on you?

A. Well, I didn't feel that the company wanted us to have an outside organization.

Trial Examiner FORT. I have no further questions.

By Mr. GIBSON:

Q. You were perfectly sure that you were entitled to what you wanted, were you not?

A. Well, that is right.

914 AMBROSE KENNETH FOWLER, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. SPENCER:

Q. What is your name?

A. Ambrose Kenneth Fowler.

Q. Where do you live?

A. 531 West Onley Road.

Q. What is your occupation?

A. Line foreman for the Virginia Electric and Power Company.

915 Q. Were you working for the company on or about the middle of May of last year?

A. Yes, sir.

Q. That is, in the year 1937?

A. Yes, sir.

Q. Did you have a conversation on that day with Mr. May?

A. Yes, sir.

Q. Will you state briefly what it was?

A. On or about the middle of May—I don't know and cannot recall the exact date—one morning the foremen were leav-

916 in the office and Mr. May instructed each and every foreman, myself included, to have our men at the Cove Street at four o'clock.

Q. When you say Cove Street you mean the company building?

A. I would say the company building and property on old Cove Street.

Q. He told you that in the morning?

A. Yes.

Q. To have your men there at four o'clock?

A. At the office at four o'clock.

Q. Did you see your supervisor at any time before four o'clock that afternoon?

A. He came by the job where I was working around approximately 3:15, or between 3:15 and 3:30, and asked me, so I go ready to go in. I told him I would be in in a few minutes, and left for town. The crew of men came on in and I rode with him.

Q. Did you have any conversation with him on the way in?

A. I asked him what we were doing having a meeting, or something of the kind. He told me we were having a meeting, but I would not attend because I was not eligible.

Q. Who said that?

917 A. Mr. May.

Q. He told you that you could not attend because you were not eligible?

A. Yes.

Q. Was there anything else said on the way in?

A. I asked him, "Do you know the purpose of the meeting?" I had a little idle curiosity possibly. He didn't seem to know any more about it than I did. I said, "What is it? Is it a labor proposition?"

At that time the whole country was more or less in a turmoil and everybody was talking labor problems.

He said he didn't know.

My expression to him, as well as I can remember, was "what is the matter? Is the company getting scared?"

His answer to me was yes and no.

That finished our conversation on that subject.

Q. What is the usual time for you to bring in your crew in the afternoon?

A. Four-thirty in the afternoon.

Q. On this day you were told by Mr. May to have your men in at four o'clock?

A. That is right.

Q. Do you know whether or not the men were docked or whether they were docked in their pay envelopes for that half hour they came in early on that day?

918 A. I do not. I had no instructions to dock them. I carried them for a full day. Whether they were docked in the office or not I don't know.

Q. You were not docked; were you?

A. No, sir.

Q. Did you attend the meeting or any part of the meeting held at the Cove Street Building?

A. I did not.

Q. Did you later hear what transpired at the Cove Street meeting?

A. In an off-hand way I did. I didn't know a whole lot about it and I didn't learn a whole lot about it.

Q. What did you hear about it and from whom did you hear it?

919 By Mr. SPENCER:

Q. Tell us just what you heard.

A. Naturally working around a crew of men who all attended the meeting, they would discuss it. As I understand it, the meeting was to tell the men that they were free to organize an organization of their own choosing. That was the gist of the conversation among the men.

929 Q. Mr. Fowler, did you ever work a Mr. Harrell on your truck?

A. I did for a short while, building a rural line in the state of North Carolina.

Q. What kind of a workman was Mr. Harrell?

A. Hard-working boy.

Q. In what capacity was he employed on your truck?

A. If I remember correctly, he was rated as a helper. I think he had some tools, and was trying to learn to be a lineman, or something of that kind. I don't know his exact rating at that time. He was an extra man given to me to help take care of that line.

By Trial Examiner FORT:

Q. Was that T. Harold, do you mean?

930 A. T. M. Harold; yes.

936 Cross-examination by Mr. WHITE:

Q. You said Mr. Harrell was working for you in North Carolina in August 1937, as I understood it. Is that correct? Or was it some other date?

A. No. I think you have the date wrong there—August 1937.

Q. What was the date?

A. We were there in the spring.

Q. What was the date?

A. It was in the spring of 1937, I believe. I think it was April.

Q. In April?

937 A. April or May. I don't remember the exact date, to save my life.

Q. You are engaged in construction work?

A. Yes, sir.

Q. Was there a good deal of construction work at that time?

A. Not at that time. We were about getting over a grand royal rush at that time, I think.

Q. I don't mean to designate the month as April, but I mean in the period of 1936–1937.

A. The storm of 1936—last spring we were up to our eyes all of the time in work. Since then it has slowed down a little.

Q. Were any of the men released at the time Mr. Harrell was let out?

A. I think there were about 15, as well as I can remember.

Q. Have their places been filled?

A. Not that I know anything about.

Q. Did you do all of the work that needs to be done? I don't mean you personally, but was it done by your department?

A. I don't think we are so far behind. We have something to do all of the time.

Q. But you are up to date?

A. I am not in position to know that one way or the other.

Q. How long have you been a member of the American Federation of Labor?

938 A. Nearly twelve years.

Q. It must have been pretty well known during the course of that time; wasn't it?

A. I never advertised it greatly and I never kept it from anybody.

Q. Do you know of any members of the American Federation of Labor in the Distribution Department now?

A. I think there are some.

Q Do you remember how many?

A. Possibly 35 or 40.

Q. Have you any knowledge with respect to the C. I. O. in the Distribution Department?

A. No, sir; I don't know anything about it.

Q. You are not a member of both?

A. No, sir.

Q. You say 15 men were laid off at the same time Mr. Harrell was laid off?

A. Yes.

Q. Do you know whether or not any of those were members of the American Federation of Labor or the C. I. O.?

A. Some were members of the American Federation of Labor. I don't know that we have ever had a member of the C. I. O. at Cove Street.

Q. You are not able to state the number and you don't know the number?

A. Not exactly; no, sir.

944 ALFRED FLEMMING STAUNTON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. SPENCER:

Q. State your full name for the record, please.

A. Alfred Fleming Staunton.

Q. And what is your address?

A. 114 Leving Street, Berkley, Virginia.

Q. Mr. Staunton, have you ever been employed by the Virginia Electric & Power Company?

A. I have.

Q. When did your term of employment start with the company?

A. In September 1936.

Q. In what capacity were you employed?

A. First-class lineman.

949 Q. Now, at the meeting Mr. Brown was elected, either that meeting or the first meeting, did you question Mr. Brown as to what this organization was that he was getting into?

A. I did.

Q. What was your question and what was his answer?

A. I asked Mr. Brown, I said, "Mr. Brown, is this going to be a company union or is it going to be outside affiliation?"

950 He says, "It is not going to be a company union; it is going to be an independent organization. We don't want outside affiliation and make the company mad."

He said, "Boys, you know we can't make the company mad at us."

Trial Examiner FORT. Who is Mr. Brown that you spoke of?

Mr. SPENCER. Mr. Brown is one of the persons that was elected, or selected, to go downstairs and see Hollik.

By Mr. SPENCER:

Q. Are you working for the V. E. P. Company now, Mr. Staunton?

A. No, sir.

Q. Did you resign?

A. No, sir.

Q. Why aren't you working for them now?

A. I was notified on November 3rd that my services are no longer required because I would not sign the Independent card.

Q. That was the reason assigned for your dismissal?

A. Yes, sir. My service was satisfactory for a year and a half, and there was no fault with my work.

952 Q. I show you a slip of paper here, which has been marked for identification as "Board's exhibit No. 26," and which says it is an application card to the I. O. E. I ask you if you saw any employees during working hours and on company property soliciting men and getting their signatures affixed to this card or a similar card?

A. I did.

Q. And do you know whether or not those men were ever disciplined in any manner for soliciting members in the I. O. E. on company property and on company time?

A. I have no idea. I don't think——

Mr. SPENCER. I now offer this photostatic copy, which has been marked for identification as "Board's exhibit No. 26" in evidence, Mr. Examiner.

(The document above referred to was marked "Board's exhibit No. 26," and received in evidence.)

953 Q. Mr. Staunton, when did you say your services were terminated?

A. November 3rd.

Q. 1937?

A. Yes.

Q. And what was your average weekly pay?

954 A. Well, we were paid every 15 days at an average of about 73 or 75. It varied.

Q. $73 or $75 every two weeks?

A. Every two weeks.

Q. Have you had any work since your services were terminated by the company?

A. Yes, sir.

Q. Where have you worked?

A. I work for Fishback & Moore, contractors in New York.

Q. When did you start to work for them?

A. On or about November 15th, I guess.

Q. 1937?

A. 1937.

Q. And how much is your average weekly pay there?

A. My average weekly pay is about $80 a week right now.

Q. Are you working for that concern at the present time?

A. Yes, sir.

Q. Do you want your job back with the Virginia Electric & Power Company?

A. I do.

Q. Is the work that you do the same kind of work that you were doing for the V. E. P. Company?

A. Similar.

Q. Where does your family live?

A. In Berkley, Virginia.

955 Q. How far is that from Norfolk?

A. Right across the river.

Q. Have they lived there during this period that you have been up in New York working?

A. They have.

Q. And you want to come back to the company so that you can be close to your family?

A. That is the idea.

Q. Do you know how much money you have earned since you have been with the concern in New York?

A. No; I couldn't say offhand. It is a flat salary of $1.65 an hour every hour I work for them.

Q. How long have you been making the $80 or approximately $80 every two weeks?

Trial Examiner FORT. Is it every two weeks or every week?

The WITNESS. Every week.

Trial Examiner FORT. Every week.

By Mr. SPENCER:

Q. How long have you been making that?

A. Since November, between the 12th and 15th.

Q. Between the 12th and 15th of what month?

A. November 1937.

965 Cross-examination by Mr. WHITE:

Q. I believe you said you saw I. O. E. cards or applications for membership signed during working hours on company property?

A. I did.

Q. Will you please state for the record as nearly as you recall the names and the dates when that occurred?

A. Mr. White, I cannot. It happened not once but five or six or several times I saw it around there, that is, men soliciting around the place. I saw them sign in the warehouse and in the office, and I saw them sign on the trucks, on the fenders of trucks. For me to tell you where and when, I cannot do it.

Q. Do you know who was the man present who was

966 going to people to sign up for the I. O. E.?

A. Yes. Mr. Faust ran around Norfolk.

Q. You saw him signing up on company property?
A. Yes.
Q. And during working hours?
A. Yes.
Q. Who else besides Mr. Faust?
A. I wouldn't say.
Q. Do you know P. D. Brown?
A. Yes.
Q. He was not in the line department, was he?
A. No. He was in the cable department.
Q. Did you ever see him sign them up on company property?
A. Yes.

967 Q. But you definitely saw Mr. Faust sign them up on company property during working hours?
A. I did.
Q. On how many occasions?
A. Several.
Q. Several different occasions?
A. Yes.
Q. Was this before August 5, 1937, or after it?
A. I wouldn't say. I wasn't interested enough to pay attention to the time or when or where, because I wasn't interested in the company organization at all. I just ignored the whole thing and paid no attention to it.
Q. As a matter of fact, Mr. Staunton, the instances that you recall when Mr. Faust presented the cards for signature on company property, were they not always after the contract had been signed with the company, and he was giving these men an opportunity to come into the organization so that they would not lose their jobs?
A. As I told you before, I didn't know that they had a contract. I never seen the contract; I don't know when they signed the contract; if they have a contract yet, I don't know.
Q. Do you remember the names of any of the parties that were signed up—any of them?
A. I do not.

968 Q. You don't remember the names of any of the parties?
A. No.
Q. Mr. Staunton, on the last night before you were dismissed from the service of the company, did you attend a meeting of your local of the I. B. E. W.?
A. I don't remember whether I did or not.
Q. Do you recall that the officials of your own local told you that they were going to sign these I. O. E. cards, and requested you to sign I. O. E. cards?
A. They asked me to do it; yes.

Q. They did ask you to do it?

A. Sure.

Q. Your own——

A. They told me to take it upon my own shoulders, and do as I saw fit, what I thought was best, and as a union man I thought I done the best thing.

Q. Did Mr. Faust at the same meeting ask you to sign up this card then?

A. I don't remember. I think he did.

Q. Will you please state for the record the reason you gave Mr. Faust for not signing the card?

A. I don't know whether I gave him any reason or not.

969 By Mr. GIBSON:

Q. Mr. Staunton, you regularly read the bulletins that were posted on the bulletin board, did you not, while in the company service?

A. Sometimes I did and sometimes I did not.

Q. Did you know it was your duty, as an employee, to read those bulletins when they were posted?

A. Yes; I did.

Q. Did you try to discharge that duty? Did you try to read all the bulletins that were posted?

A. I wasn't interested in this bulletin.

Q. Did you make a practice to read the bulletins issued by the president of the company?

A. Some of them and some I have not.

Q. Will you look at this paper, which is the bulletin which was posted, and tell me whether you saw that posted

970 [handing paper to the witness]?

A. Yes.

Q. You saw it posted?

A. I did.

Q. This is a quotation from the agreement of August 5, 1937, between the company and the I. O. E., and one of things quoted is a statement that:

"During the term of this agreement, the employer hereby agrees not to retain in its employment for a period of more than ninety days after the date of this agreement any employee eligible for membership in the Employee Organization, unless he becomes a member."

971 You saw that; did you not?

A. Yes.

Q. The next paragraph states that:

"Nothing contained in this agreement shall prevent or in any wise affect the right of any employee to join or remain a member of any other labor organization."

You saw that; did you not?

A. I did; yes.

Q. At the time that your connection with the company was ended, did any officer of the company tell you that you had to resign from the A. F. of L.?

A. No.

Q. Is not the whole truth of the matter simply that you did not want to join the I. O. E., and accordingly resigned?

A. I didn't resign. I was just told to leave; that was all. I didn't care for the I. O. E. We all have our own ideas, of course.

Q. You preferred to quit rather than to sign up with the I. O. E.?

A. I didn't quit.

972 Q. You preferred not to work rather than to be a member of the I. O. E.; is not that true?

A. I wanted to work; they wouldn't let me, because I wouldn't join their so-called union.

Q. You had free choice whether to continue there and be a member of the I. O. E. or to stop and not be a member; is not that true?

The WITNESS. I did.

974 Q. What kind of construction work are you doing now with Fishback & Moore?

A. Linesman, steel construction.

Q. It is a power line?

A. Yes.

Q. Rural power line?

A. No; it is buildings; great heavy feeders inside buildings.

Q. Where is the work being done?

A. At Camden Hill, Pennsylvania.

Q. Would you mind repeating? I did not hear the first name.

A. Camden Hill, Pennsylvania.

Q. What company are you doing construction for?

A. United States Steel.

Q. How did you get that job?

A. Going after it.

Q. You knew before you left here that you could get it; didn't you?

A. No, sir; I did not.

Q. Hadn't you been assured by men here in Norfolk that you would have that job?

A. No, sir.

Q. Did you go from here straight to Fishback & Moore?

A. No, sir.

975 Q. Where did you go?

A. Washington.

Q. And from there where did you go?

A. From there I went to this job. I heard about this job there. Before that I turned a job down here. I was offered a job at a dollar, a dollar and a quarter—I think it is a dollar and a quarter an hour. I wouldn't take it.

Q. Who offered it to you?

A. A man who was working on the job. I think the job was for the Virginia Electric & Power Company.

Q. The job was for the Virginia Electric & Power Company?

A. Yes.

Q. You wanted to leave Norfolk?

A. I did.

980 Q. How did you happen to be in Chesapeake Beach with Mr. Fowler?

A. Working on a regulating station.

981 Q. Working on a regulating station?

A. Yes.

Q. Was it while you were doing that that Mr. Fowler recommended the A. F. of L.?

A. The conversation was not at that time.

Q. Well, Mr. Fowler was likely to talk about that subject almost any time, wasn't he?

A. Certainly.

Q. Did you hear him several times discussing the subject of labor organization?

A. On several occasions.

Q. Including on company time?

A. Sometimes on company time he spoke of it, and sometimes he did not.

982 Had you been a member of the A. F. of L. before June of 1937?

A. I was.

Q. I beg your pardon. I did not hear.

A. I was.

Q. When did you first join?

A. In 1922.

Q. How long were you a member?

A. Several years.

Q. Several years, and then you resigned?

A. I stopped doing line work for a while.

Q. When you joined again in June 1937, however, you supported it actively; is that true?

A. I did.

Q. And you solicited a number of members; isn't that true?

A. I did.

Q. Where?
A. Oh, around town; about the plant.
Q. Out on the line?
A. No.
Q. Around the plant?
A. Yes.

985 By Trial Examiner FORT:

Q. Was the job you were offered immediately after you left the company as good as the one you were dismissed from?
A. The job I have now is a better job and is not as good a job. It is a contracting job.
Q. Is it permanent?
A. No, sir.
Q. Or temporary?
A. It is temporary.
Q. What was the one you were offered after you left the company?
A. It was temporary. It was contract work too.

987 Redirect examination by Mr. SPENCER:

Q. You said you solicited some memberships for the
988 I. B. E. W. around the plant?
A. Yes.
Q. When you say "Around the plant," just exactly what do you mean by that term?
A. Before working hours and after working hours. When we first started we had a pledge card and we had a good majority of the members to sign these pledge cards. When they saw we were doing that they sort of threw a scare into the union and a lot of men who signed the pledge cards refused to sign up with us afterwards.
Q. My question, Mr. Staunton, by 'around the plant"; do you mean outside of the plant or inside the plant?
A. Outside the plant, over at the corner, or anywhere we met the men we talked to them at the company property.
Q. But you meant you were signing up men in the plant and out?
A. Yes.

Recross-examination by Mr. GIBSON:

Q. When did you start signing up those cards?
A. Around in the early part of June.
Q. What year?
A. Last year.
Q. How long did you continue signing them up?
A. As long as we had men we could get.

991 Cross-examination by Mr. LATHAM:

Q. When you were dismissed for failure to become a member of the I. O. E. did you ask the reason for your dismissal?

A. I did.

Q. And you were told what?

A. Because I did not sign an I. O. E. card.

992 Q. Did you ask them if there was anything against you as to your work?

A. I did.

Q. Did you ask for a recommendation?

A. I did.

Q. Did you get it?

A. I did.

Q. Did you get it the first time you asked for it?

A. No.

Q. What were you told?

A. I was told if I signed a resignation or release they would give me a recommendation.

Q. Did you do this?

A. I did not.

Q. And then you got a recommendation?

A. I did.

Q. When you were hired by this company were you let to believe you hired for a temporary or permanent assignment?

A. I was not.

Q. Which do you mean?

Q. Which were you?

A. A permanent job. They didn't say nothing about no temporary work.

Q. There have been some questions asked you which would lead one to believe you intended leaving the Virginia

993 Electric and Power Company about the time you were dismissed, that you were dissatisfied. Is that correct?

A. It is not.

Q. You intended to stay with the company as long as you had a job?

A. I did.

995 Re-cross-examination by Mr. GIBSON:

Q. Were you back in Norfolk about Easter of this year?

A. I was.

Q. Did you see Mr. Crafton at that time?

A. I don't remember whether I did or not. I think I did speak to Mr. Crafton.

Q. Did you tell him you were getting along well in your present job?

A. I did.

Q. Perfectly satisfied with it?

A. I did.

996 By Trial Examiner FORT:

Q. Was the job in which you were employed with the Virginia Electric & Power Company a job that was normally filled at all times?

A. It was; yes.

999 ROBERT E. ELLIOTT, Jr., a witness previously called by the National Labor Relations Board and duly sworn, was recalled and testified further as follows:

Direct examination resumed by Mr. SPENCER:

* * *

Q. When did your services terminate with the Virginia Electric & Power Company?

A. November 3, 1937, I understand.

Q. Did you resign from the Virginia Electric & Power Company?

A. I did not.

Q. What were the circumstances under which your employment terminated on that date?

A. I was notified that at midnight, November 3, 1937, if I had not become a member of the I. O. E., I would no longer be employed by the V. E. P. Co.

Q. And did you join the I. O. E.?

1000 A. I did not.

Q. And as a result of that——

A. I was dismissed.

Q. At the time of your dismissal from the company, what was your average weekly pay?

A. I would say around 30 dollars a week.

Q. Were you paid every week or every two weeks?

A. Twice a month, on the 6th and 21st.

Q. Were you paid by check?

A. By check.

Q. What was the amount of the check?

A. My semimonthly checks would run anywhere from 50 to 70 dollars, according to the number of hours I worked. At that time, I was working on the extra board.

Q. Have you been employed since November 3, 1937?

A. I have.

Q. By whom have you been empoyed?

A. By the Norfolk Labor Journal and the Amalgamated Association.

Q. How long did you work for the Norfolk Labor Journal?

A. About two weeks.

Q. How much did you receive in money for your services with the Norfolk Labor Journal?

A. I don't know. I was working on a commission basis, selling ads for the Labor Journal. I do not think I received
1001 more than $25 for the two weeks' work.

Q. When was that that you worked for the Norfolk Labor Journal?

A. The first part of December 1937.

Q. You worked there about two weeks, you say?

A. About two weeks.

Q. Then, what did you do after that?

A. I started to work for the Amalgamated Association.

Q. When did you start to work for them?

A. The contract became effective January 1, 1938.

Q. And how much money have you received, and do you receive weekly from the Amalgamated?

A. $40 a week for expenses.

Q. Are you working for the Amalgamated at present?

A. I am.

Q. Is it a temporary or permanent job?

A. Temporary job.

Q. Do you want your job back with the Virginia Electric & Power Company?

A. I do.

1002 Q. Now, what kind of work were you doing with the company, the V. E. P. Company; what was the nature of your work?

A. Bus driver and street car operator.

Q. What is the nature of the work that you are doing now with the Amalgamated?

A. Special organizer.

Q. Is there any similarity between a bus driver's work and the work of an organizer?

A. Only in a very round-about way.

Q. Well, what is that round-about way?

A. Well, except that the two classes of employees in the Amalgamated have something in common, which is a general knowledge of the work.

Q. But your hours are not the same?

A. No, sir.

Q. Your rate of pay is not the same?

1003 A. No, sir.

Q. The locality in which you work is not the same?

A. It is not.

1007 Cross-examination by Mr. WHITE:

Q. Mr. Elliott, you were given ample opportunity before November 3rd to sign an I. O. E. membership card, weren't you?

A. Ample, yes.

Q. And your failure to sign, therefore, was purely a voluntarily act on your part and not by reason of any failure to have the opportunity presented to you to join?

A. Do you want my full reason for not signing?

Q. No. I say your reasons were voluntarily?

The WITNESS. That is right.

By Mr. MOORE:

Q. I call your attention to Respondent's Exhibit No. 8, which appears to be a bulletin dated November 4, 1937, signed by Mr. Holtzclaw. Did you observe that bulletin on that date as being posted?

A. I did not.

Q. You never saw that bulletin before this proceeding began?

A. To the best of my knowledge that is the first time I have seen that bulletin.

Q. For several week prior to the date that your employ-
1008 ment ceased in November you did know that there was a condition in the contract between the I. O. E. and the company by which all eligible employees would have to be members of that organization, didn't you?

A. I didn't know it: no, sir. I was told by quite a number of people that that provision or condition was in the contract, and that condition was posted on the company union's bulletin board, and I read it on the company union bulletin board. But even then I was not assured that was in the contract.

Q. Did you notice a provision in the bulletin that you did see that there was a proviso that a person could be a member of some other labor organization if he desired and also be a member of the I. O. E.?

A. I did.

Q. Was that before November 1, 1937, that you saw that?

A. It was.

1009 ABRAM DAVIS, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

1011 Direct examination by Mr. SPENCER:

Q. Where were you when you signed the I. O. E. card?

A. In the Cove Street garage.

Q. And who asked you to sign?

A. Mr. Faust on several occasions.

Q. Was it during working hours?

A. It was during working hours.

Q. Now, after you started working in 1936 for the company when was the first time that you heard of any activity among the employees in regard to the union?

A. Indirectly the first I heard was 18th Street was trying to organize; I would say that is something like April of last year. Directly the first I heard we were working at Chesapeake Beach. I was working with Mr. Fowler——

Q. Is that Mr. Fowler who has been referred to in the testimony here?

A. That is right, A. K. Fowler. It was some time during the day near dinner time Mr. Fowler told us that we were going to be carried in that afternoon to a meeting. We asked him what kind of a meeting. He said, "Well," he says, "I don't know, but you are going into a meeting."

And a little bit later on Mr. May came by. I assumed that he was going to lunch.

In a discussion we talked about it again. Fowler told us. "Boys," he told us, "you are going to go in and there is
1012 going to be a company union shoved down your throats," and, he says, "as men, for God's sake don't swallow that stuff."

We discussed it, and at four o'clock that afternoon we did go in. Mr. Fowler came in with Mr. May. Staunton took Fowler's seat in the truck, and we came to coax him.

The meeting was addressed by Mr. Hollik.

Q. Was this meeting held in a period that you would normally be working?

A. It was held during working hours. We knocked off at four-thirty, and we were in the garage, I will say, about five minutes past four.

Q. Was any money taken out of your pay envelope or check?

A. Not one cent.

Q. For loss of time from work?

A. No, sir. In fact, we were paid for it.

By Trial Examiner FORT:

Q. Right there, you said you knocked off at four-thirty

A. Yes, sir; we ordinarily knock off at four-thirty.

Q. You do that ordinarily?

A. Yes, sir.

By Mr. SPENCER:

Q. Will you state what took place at that meeting when you got there; what you saw and heard?

A. Mr. Hollik made this statement, to the best of my knowledge: He says, "As free-born American citizens you have a right to organize under the terms of the Wagner Labor Rela-
1013 tions Act."

He said, "The company has always enjoyed very friendly relations with the men. I do not see at this time why it would be necessary to join any outside organization. I think that you could accomplish just as much among yourselves."

As he closed the meeting he told us that we could elect our representatives, and he would meet them downstairs in a half hour.

Someone asked a question from Mr. Hollik if the line department was entitled to more than one representative.

He said, "You can get a couple of them," and waved his hand, and walked away.

Mr. Faust and Mr. Brown were elected as our representatives. For what purpose I don't know. Collective bargaining, I assume. But they were elected, and they went downstairs, and I suppose they met Mr. Hollik.

That was all that took place at that meeting, that I recall.

Q. Now, did you attend any other meetings?

A. I attended a meeting again about one week later.

Q. And who called that meeting?

A. That meeting was called, or was presided over by Mr. Brown. Mr. Fowler had us into the garage at four o'clock.

Q. Had you seen Mr. Hollik or any of the supervisors or foremen at the meeting?

1014 A. None that I recognized as a supervisor.

Q. And how did you get notice of this meeting?

A. Mr. Fowler gave us notice that we would be brought in, and we were brought in for a meeting.

Q. Now, go ahead and tell us what happened at that meeting.

A. At that meeting—while there, of course, I learned the purpose of it. It was to elect representatives and take a vote on affiliation.

There was quite a bit of discussion on that. We took a vote for outside affiliation or for an independent union; but before we took the vote Mr. Brown explained to us what that was—I mean what the purpose was.

Mr. Staunton asked Mr. Brown, he said, "Mr. Brown," he says, "what is this to be, one of these company unions?"

Mr. Brown says, "No, this is not a company union; this is collective bargaining."

He says, "But you know the company don't want you to join any outside affiliation. If you do, you are liable to make the company mad."

We took a vote as to that, and the way the vote was taken—there was a group of each truck; men that was on each truck; and we wrote on a piece of paper for C. I. O. or A. F. of L. or outside affiliation, and for independent or company unions.

Well, the votes were counted. Mr. Brown, he, of course,
1015 had taken the slips and checked the number of men on there and their affiliations, and there were two or three there to assist him. I don't remember whether Mr. Faust was there or not, but I think one of the men that did help him was Paul Cornette.

After the count there was approximately, I believe, 35 or 37 votes for outside affiliation. At the time Mr. Morris, from Portsmouth, came in and said he had 21 votes and that he was instructed to put them in the way Cove Street went.

I contested it. I told him I did not think that he had the right to put these votes in, because it was not giving the men a chance to vote, and they could not tell how Cove Street would go until the votes were counted.

They were accepted and added in to the company union, counted in with them, and that gave them about 50 votes.

Q. If the 21 votes had been given to the outside union, that would have been a great majority for the outside union?

A. I think so; yes.

1025 Cross-examination by Mr. WHITE:

Q. Mr. Davis, do you recall when you signed your application for membership in the I. O. E.?

A. I do.

Q. When was it?

A. It was the last week in October, I think.

Q. Who took your application?

A. Mr. Faust.

Q. Where were you when he took it?

A. At the garage at Cove Street.

Q. Whereabouts in the garage?

A. The store room; the back part.

Q. What time of day?

A. The morning.

Q. What time of the morning?

A. I would say probably ten or fifteen minutes past eight.

1026 Q. Didn't he tell you why?

A. I don't recall any specific time that he told me why. Of course, I assumed they had a contract and a closed-shop agree-

ment. But so far as knowing it, I didn't know. I have never seen the contract

Q. You have never seen the contract?

A. I have seen it since that time.

1046 Cross-examination by Mr. LATHAM:

Q. Actually hurt him how?

A. In what way, he didn't say. We also brought out about Mr. Judge. He said he was very sorry to see Johnnie go, that he was a nice boy, and he liked him, and he thought that everybody else down there liked him. We were talking about Slim Harold—Mr. Harold—and he said that Slim was a good boy; that he never had had any trouble with him, and got along fine with him, while he worked for him.

Q. Mr. Tweedy occupies what position with the Virginia Electric & Power Company?

A. He is foreman for the Virginia Electric & Power Company.

1065 JOHNNIE L. JUDGE, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. SPENCER:

Q. State your full name for the record, please.

A. Johnnie L. Judge.

Q. What is you. address?

A. Chesapeake Beach, Lynnhaven, Virginia.

Q. Mr. Judge, have you ever been employed by the Virginia Electric & Power Company?

A. Yes, sir.

Q. When did your employment first begin?

A. April the 7th, 1936.

Q. And what type of work were you assigned to?

A. Employed as a lineman helper.

1067 Q. What organizations are you a member of.

A. I. B. E. W. and I. O. E.

Q. Do you hold any office in either of them?

A. Yes, sir; financial secretary and treasurer of the I. B. E. W.

Q. How long have you held that position?

A. I have held that position since August the 4th, 1937.

1078 Q. Mr. Judge, I questioned you yesterday in regard to a bulletin posted on the bulletin board at the V. E. & P. Co. in regard to a meeting. Will you relate how that bulletin appeared on that board?

A. It was just pinned on the bulletin board, the company bulletin board, right beside the company union bulletin. They also had a bulletin up there, too.

Q. Who posted that bulletin on the board?

A. Mr. Staunton posted the bulletin.

Q. Who was the author of the bulletin?

A. Him and myself together.

Q. Did any signatures appear on that bulletin?

A. Yes, sir.

Q. Whose signatures appeared on the bulletin?

A. A. F. Staunton and J. L. Judge.

Mr. SPENCER. Will you mark this for identification, please?

1079 (The document above referred to was marked "Board's Exhibit No. 29" for identification.)

Q. I show you a paper marked for identification Board's exhibit No. 29, and ask you if you can identify that paper [handing the document to the witness]?

A. Yes, sir.

Q. What is that?

A. That is the notice we put on the company's bulletin board.

Q. Is that the original notice that was on the board?

A. That is the original; yes, sir.

Mr. MOORE. Will you let me see that, please?

Mr. SPENCER. Yes, sir [handing the document to Mr. Moore].

By Mr. SPENCER:

Q. Mr. Judge, there appear to be some very small holes in the corner of this document. Can you tell me what made those holes in that paper?

A. Thumb tacks.

Q. So this is the bulletin that was placed on the bulletin board?

A. Yes, sir.

Mr. SPENCER. I now offer this as Board's exhibit No. 29.

Trial Examiner FORT. There being no objection, it will

1080 be received.

(The document heretofore marked "Board's exhibit No. 29" for identification was received in evidence.)

1081 By Mr. SPENCER:

Q. What time of day or night was this bulletin posted?

A. We made that notice up, I think it was Sunday night. Mr. Staunton came to my house at Chesapeake Beach, and we fixed it up and signed it. He brought it back to town and posted it

on the bulletin board the following morning, if I understand correctly.

Q. How long did it remain posted?

A. It remained posted until the afternoon of the same day.

Q. And why was it taken down on that afternoon?

A. When we came in to work, before we got into the building, Mr. Crafton motioned to Staunton and myself to come upstairs in the office. We went up there, and Mr. Crafton and Mr. Holik, both told us we would have to take it down.

Q. Who is Mr. Crafton?

A. Mr. Crafton is superintendent of distribution in Norfolk.

Q. Who is Mr. Holik?

A. He is superintendent there—I really don't know. He is the superintendent over Mr. Crafton; I will say that.

Q. Now, will you relate what they told you?

A. They told us we would have to take it down, because we didn't have an agreement with the company to put it up.

Q. Were there any other bulletins posted on that board at the time you posted your bulletin, or at any time during the time your bulletin was posted?

1082 A. Yes, sir.

Q. Was there any bulletin on the board at the time you were told to take yours down?

A. Yes, sir; it was one up there.

Q. What was the nature of the bulletin that was on the board during the time yours was there, and remained on the board after yours was taken down?

A. Frankly, I don't remember what was in the bulletin, but it was pertaining to the I. O. E.

Q. And after you left Mr. Crafton and Mr. May's office, you came down and took your bulletin down; is that correct?

A. Mr. Crafton and Mr. Holik, it was.

Q. Mr. Holik?

A. Yes.

Q. Now, I asked you on yesterday about going to the grievance committee in regard to a raise in pay. I will ask you again to relate just what you did in regard to approaching the grievance committee and what you were asking for.

A. I first went to Mr. Faust and told him I wanted a raise and a new rating.

Trial Examiner FORT: May we get some of these dates for these different things?

Mr. SPENCER. Yes.

Trial Examiner FORT. I do not think the date of the posting of that bulletin has been fixed.

1083 Mr. SPENCER. The date is on the bulletin.

The WITNESS. August 16th.

Mr. GIBSON. Yes, sir; he said it was posted at that time.

Trial Examiner FORT. That was not covered, and I would like to have the dates fixed.

Mr. SPENCER. Yes.

By Mr. SPENCER:

Q. Did you write up this bulletin yourself?

A. Yes, sir.

Q. Would you say that the date which appears on there is the date when the bulletin was written?

A. It was the day it was posted. It was written on Sunday, but it was dated Monday morning, if I am not mistaken.

Q. What is the date appearing on the bulletin?

A. August 16th, 1937.

Q. That is the date on which the bulletin was posted?

A. Yes, sir.

1087 Q. After your discharge did you ever discuss your discharge with Mr. May?

A. Yes; I did. On one occasion we were working down in North Carolina, and we worked late, and he stayed down there with us all day, and came in just about dark.

I rode in a truck, and he came in an automobile, and he got in a few minutes before the truck did, naturally, because he went a little faster.

He was standing out there——

Q. Talk a little louder.

A. He was standing out in front of the building when we

1088 got off. He asked me if I have an automobile with me.

I said, "No, sir."

He asked me, "Will you drive home with me?"

I said, "Yes, sir. Glad to."

So I rode home with him. And he brought up the conversation. He said he was sorry I got laid off. He said he did not understand exactly how it came about. He said apparently there was plenty of work, and that he did not understand it. He said he was sorry it happened. He said, "It looks like they are throwing a scare down there."

By Trial Examiner FORT:

Q. Who said that?

A. Mr. May, general foreman. I think that was about the length of the conversation.

By Mr. SPENCER:

Q. Now, this conversation; you do not mean that this conversation between you and Mr. May took place after your discharge? That took place after your notice of discharge; is that correct?

A. Yes; that this correct. I got my notice on the 22nd day of March that I would be laid off—discharged on the 31st of March; and that was two or three days after I got any notice of discharge.

Q. Around the time that you were discharged was the I. B. E. W. putting on an active drive to secure members into the I. B. E. W.?

A. Yes, sir. We just recently obtained our charter and
1089 making a special effort to get new members.

1135 Cross-examination by Mr. GIBSON:

Q. When did you sign an application card or an application for membership in the I. B. E. W.?

A. Application for membership?

Q. A pledge card.

A. A pledge card?

Q. Yes.

A. June 25th, if I am not mistaken.

Mr. SPENCER. What year, Mr. Judge?

The WITNESS. 1937—a few days after the Blair Junior High School meeting.

By Mr. GIBSON:

Q. You thereupon became a member of the I. B. E. W; is that correct?

A. Not at that time; no.

1136 Q. And on that date you were elected financial secretary?

A. Financial secretary; that is true.

Q. Did you solicit any members before your election as financial secretary?

A. I think I did.

Q. Did you begin soliciting members shortly after you signed your pledge card on June 25th?

A. I talked to the fellows around there; yes, sir.

Q. You told Mr. White that it was well known that you were a member of the I. B. E. W. I suppose that general knowledge began in the latter part of June 1937; is not that true?

A. I know they must have had absolute knowledge of it when we put that notice on the board, with my signature to it as secretary.

Q. Yes. Well, I would like to repeat my question now and see if you can answer it, and that is whether it became generally known that you were a member of the I. B. E. W. toward the latter part of June 1937.

A. It was known by whom?

Q. Generally known, that is, by a number of people; a substantial number of people, outside of the I. B. E. W.

A. Outside of the I. B. E. W.?

Q. Yes.

A. I don't know. I guess they did know. Some of them did.

1137 Q. You were generally soliciting members; were you not?

A. I tried to do all I could; yes, sir.

Q. Did you get everyone you solicited?

A. I can't answer your question. I don't remember.

Q. I should think you would have a pretty good idea; would you not? Don't you have a pretty good idea?

A. I don't remember whether I got everyone I solicited. Probably I didn't.

Q. Certainly, after your election as financial secretary on August 4, 1937, it was widely known that you were a member of the I. B. E. W.; is not that true?

A. That was supposed to be known at that time.

Q. Is it not true that Mr. Latham arrived here in the summer of 1937?

A. I don't know the exact date Mr. Latham arrived here.

Q. I am not asking you the exact date. I ask you if he did not arrive here in the summer of 1937.

A. That is true.

Q. Did he come at the request of your associates or you?

A. He didn't come at the request of myself; no.

Q. Well, will you give me a full answer to the question?

A. Well, I—he didn't come at the request of myself.

Q. Did he come at the request of your associates?

A. He came at the request, if I understand, of Mr. Faust, Mr. Davis, a fellow by the name of Bunch, and Staunton, if I

1138 am not mistaken. That is my understanding of it.

Q. And as a result of that, there was a very active movement towards obtaining members in the I. B. E. W. about that time; is not that true?

A. Yes; it was active, quite considerable.

1139 Q. And after that time you were given two raises by the company; isn't that true?

A. One on June 1st and one on the 1st of November, as I testified a moment ago.

1141 Trial Examiner FORT. I understood the company's position on this particular case was that he was discharged because of his lack of seniority.

Mr. MOORE. That he was the youngest second-class lineman.

* * *

1176 Redirect examination by Mr. SPENCER:

Q. Do you know whether Mr. Harrell is a member of the I. B. E. W. or not?

A. Yes, sir; he is.

Q. Do you know whether or not Mr. Harrell was an active member of the I. B. E. W.?

A. Quite active.

Q. Do you know whether his activities were known generally throughout and among the employees of the company?

A. Yes, sir; they were.

Q. Just what did Mr. Harrell do to show his activity?

A. Solicited members.

Q. Do you know whether or not Mr. Harrell ever had any discussion with fellow employees around the plant there?

A. Quite a bit.

Q. Do you know whether or not during those discussions any people of a supervisory capacity were in a position to hear what was being said?

A. They usually heard about it—anything that was said about unionism around the plant.

1178 Q. From around June the 15th up until August 5th did you see any persons soliciting membership into the I. O. E. on company property and during working hours?

A. Yes, sir.

Q. Do you know whether or not those persons were ever reprimanded or disciplined in any way for using company time to solicit membership into the I. O. E.?

A. No, sir; I don't think they were. I never heard of it.

Q. Was it a general practice for employees to solicit I. O. E. memberships during working hours and on company property?

A. It was.

Q. Mr. White asked you on cross-examination if you had been discriminated against because of your membership in and activity in the I. B. E. W.——

Trial Examiner FORT. He said discriminated against by the I. O. E.

1179 By Mr. SPENCER:

Q. By members of the I. O. E. because of your membership in the I. B. E. W. What was the attitude of your fellow employees before you joined the I. B. E. W.?

A. Everyone seemed to like me. I don't think I had an enemy up there.

Q. Now, after you joined the I. B. E. W. was the attitude of your fellow employees the same as it was before you joined?

A. Some of them was and some of them wasn't.

Q. I take it from your answer that there was a difference?

A. There was a difference.

1183 Re-cross-examination by Mr. WHITE:

Q. I believe you testified it was the general practice to sign I. O. E. application cards during working hours on the company property?

A. That is right.

Q. Will you state the name of the person or persons who were soliciting memberships for the I. O. E. during working hours and on company property?

A. Paul Brown for one.

Q. Paul Brown?

A. Yes.

Q. Who else?

A. Mr. Faust.

Q. Was there anybody else?

A. That is all I remember.

Q. Those are the only two you remember?

A. The only two.

Q. Approximately what dates did you see that done?

A. Well, as to Paul Brown, that was some time in June, especially as to Paul Brown.

Q. Some time in June?

A. Yes.

Q. Was that before you signed your membership card or was it after?

A. Both before and after.

Q. It was both before and after?

1184 A. Yes.

Q. Was it very much before you signed your membership card?

A. I wouldn't say very much.

Q. Was it a week?

A. I wouldn't set a date.

Q. Couldn't you make it any more specific than just "before"? We know the date you say you signed your card.

A. If you can remember, they didn't have those cards out very much before I signed the card.

Q. I think that is true. But when did they start?

A. I couldn't tell you.

Q. I am trying to refresh your recollection so you may testify to exactly what you know about it.

A. I couldn't say definitely when, but I know it was before and some after.

Q. How often did you see it done?

A. On a number of occasions.

Q. What men did you see signed up on company property during working hours?

A. I can recall one person who did, and that was myself. I did it.

Q. I believe you said you signed it before you went to work?

A. That was on company property.

1185 Q. But not during working hours?

A. No.

Q. Who else?

A. If I am not mistaken, Frank Darden and Henry White signed on company property after working hours.

Q. After working hours?

A. Yes. After I came out of the washroom they came to me and borrowed a quarter for the initiation fee. I am quite sure that was after eight o'clock when they signed.

Q. Before they had gone to work?

A. Before they left the garage.

Q. They borrowed a quarter?

A. Yes; they borrowed a quarter from me.

Q. Who was soliciting those membership?

A. They signed with Paul Brown, if I am not mistaken.

Q. Was there anybody else?

A. Those are the only ones I can remember definitely.

Q. Was that before or after you signed up?

A. A few minutes after I signed up.

Q. The same day?

A. Yes.

Q. Did anybody connected with the management know that these two men had signed up after you left the washroom?

A. Not to my exact knowledge; no.

Q. You said Mr. Faust signed some of them. Do you
1186 remember any that he signed on company property?

A. I couldn't say that I do.

Q. Do you remember any man he signed up during working hours?

A. I can't say I can name a man.

Q. Who is that?

A. I can't say that I can name a man.

Q. Then what is the basis of your statement in the record that it was a general practice, when you mentioned only two men who were signed up by Mr. Brown? That is not general practice, is it?

A. I think that was myself and two more.

Q. I understood there were four.

A. You are asking about company property and working hours?

Q. Yes; on company property and working hours, because I think you testified it was the general practice to sign up on company property during working hours, and I just want to get the basis of the statement of that kind.

A. If I am not mistaken, I think it is two—Henry White and Frank Darden signed up after working hours and during working hours.

Q. That is all you saw that you can now recall?

A. To name.

Q. And you saw how many people signed up in all during the time the I. O. E. was being organized?

1187 A. That is something that would be impossible for me to know.

Q. What is the basis of your recollection if you don't know the time, nor the place, nor the men?

A. I stated as to those two men.

Q. That is right. But I am talking about anybody else?

A. I was very familiar with those two boys and worked with them all of the time. I was working with them continuously every day and, naturally, I would notice them.

1188 Q. You noticed it particularly because you lent them twenty-five cents, I believe you said?

A. Absolutely.

Q. But you can't remember the names of anybody else?

A. I can't.

Q. But you can't remember the names of anybody else that you signed up on company property during working hours?

A. No.

Q. Can you recall any instance where a man's application was taken to the I. O. E. which to your knowledge was brought to the attention of the management?

A. That was brought to the attention of the management?

Q. Yes.

A. No; I can't.

Q. Then can you testify whether the management knew anybody was being solicited on company property during working hours?

A. Not directly; no.

Q. You have no knowledge of that of your own?

A. Not directly.

Q. I believe you testified you never saw Mr. Faust sign up anybody on company property during working hours that you can recall?

A. No particular man. I don't remember any particular man.

Q. That is merely an impression that you have?

A. I just remember seeing him do it. I don't remember
1189 the names.

Q. Can you remember the time?

A. I don't remember the time.

Q. Nor the place?

A. I didn't think I would have to repeat it or even think about it.

Q. If you can't think of the place, what part of the company property?

A. The garage is company property.

Q. I understand you to say you saw Mr. Faust sign up men in the garage?

A. I would say that; yes; in the garage.

Q. Was it any particular part of the garage?

A. I wouldn't say; no.

Q. You couldn't say?

A. I wouldn't say no particular place.

Q. Was it before or after August 5th so far as you can remember?

A. About Mr. Faust I wouldn't say.

Q. You can't remember whether it was before or after?

A. Not as to Mr. Faust, but I do know as to Mr. Brown. I know he did.

Q. Mr. Brown did?

A. Yes. Mr. Brown did before August 5th.

Q. I believe you testified to that?

1190 A. Yes.

Q. Are there any additional cases you can recollect?

A. No.

1194 By Mr. Gibson:

Q. Mr. Tomlinson, as you said, instructed you not to solicit members while you were at work?

A. I did not. I said Mr. Fowler, after he got back on the job.

Q. Mr. Tomlinson was your foreman for a little while?

A. Yes. After Mr. Fowler got back, he said I would have to stop talking union on the job, or something of that kind.

Q. Was Mr. Fowler a member of the I. B. E. W.?

A. He testified yesterday he was.

Q. Well, then, he was, was he?

1195 A. Yes.

Q. Did you stop soliciting members on company time?

A. I couldn't see where that was company time.

Q. Did you stop soliciting men on the job?

A. I don't think I ever did right on the job or during working hours—after we got off.

Q. If you did, you did stop; did you?

A. I say I didn't.

1198 JOSEPH C. ROSS, witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

1208 Cross-examination by Mr. WHITE:

Q. Now, this card that you signed, that was after the contract had been made between the company and the I. O. E.?

1209 A. It must have been, because I never attended any meeting at all. I have never been at one of the meetings, because I didn't have enough confidence in the union to join it—not because I didn't think the company was all right or anything like that.

In 1923 we formed a union here, and they pulled off a strike here, and we had a kind of a mess of difficulties here, and I never have——

Q. Were you a member of that union at that time?

A. Yes, sir.

Q. Is that the Amalgamated?

A. Well, I think it was. I was out about six days on the strike.

Q. You still belong to the Amalgamated, or did you get out?

A. Oh, I got out. During the strike it was busted up.

1211 Mrs. DOROTHY ALINE MARTIN, a witness called for and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

1212 Direct examination by Mr. HILTON:

Q. Mrs. Martin, were you ever connected with any labor organizations in the City of Norfolk, Virginia?

A. Yes. I was once office secretary for the Amalgamated Clothing Workers of America and I acted as bookkeeper for the International Ladies Garment Workers of America.

Q. Is the organization which you just mentioned affiliated with the C. I. O.?

A. Yes; they are both of them affiliated with the C. I. O.

Q. Can you tell us briefly the kind of work you were doing for these organizations?

A. Well, for the Amalgamated Clothing Workers I did most of the typing and filing and handling of application cards and answering the telephone, and just general office work.

1213 Q. While you were employed as you just stated, did you ever make the acquaintance of a man by the name of Walters?

A. I did.

Q. Do you know his initials?

A. No; I do not.

Q. Do you know where he lived?

A. To the best of my knowledge he lived around 34th Street or 32nd Street, or somewhere up that way. I don't have his correct address.

Q. Can you give us a brief description of this man Walters that you knew?

A. He was a man about five foot seven and a half or eight inches tall; he was sort of stocky or heavy set build, and he had a scar that went all of the way down one side of his face. I don't recall exactly which side it was. And he had dark hair and sort of ruddy complexion.

Q. How did you happen to meet Mr. Walters?

A. Our union used to sponsor dances once in a while just amongst the members themselves and he rented us a hall known as Bunting Hall that he rented.

Q. How long after you first went to work in this job you have just been telling us about was it that you met Mr. Walters?

A. I went to work for them in September. It was the first of September. And it was some after September, and then

1214 between then and the first of the year, during the year 1934. I don't recall exactly the date.

Q. Do you recall how you happened to make his acquaintance?

A. He used to visit the office quite frequently and ask us how we were progressing with our organization work.

Q. Was he a member of either of your organizations?

A. No; he was not. My understanding was that at one time he was a member of the Norfolk Central Labor Union.

Q. Can you tell us just briefly what the Norfolk Central Labor Union is?

A. The Norfolk Central Labor Union is the group of members from every union in Norfolk. Painters, carpenters, and every union in Norfolk has delegates they send to what is known as the Norfolk Central Labor Union.

Q. Would this Norfolk Central Labor Union hold regular meetings?

A. Twice a month.

Q. Did you ever attend those meetings?

A. Quite often.

Q. During the year 1935 did you attend any such meetings?

A. That was the most active year.

Q. While you were present at any of those meetings did you ever see Mr. Walters?

A. I did.

1215 Q. Do you know what he was doing at those meetings?

A. No; I do not.

Q. Did you ever talk to him at those meetings?

A. After the meetings were over we used to gather around in groups and talk.

Q. Did he ever tell you why he was attending those meetings?

A. Only that he was interested in the laborers' welfare in Norfolk.

Q. And from your acquaintance with Mr. Walters and from seeing and observing him was it your opinion that he was active in labor organization work?

A. It was. I believed him to be sincere.

1216 Q. At any other times when you were present when Mr. Walters was at these meetings did he make any statements with regard to unions; as to whether or not he was in favor of them or opposed to them?

A. He did. During the Finkelstein strike he actually came out to the tents that were used for strike headquarters.

Q. Just a moment before you get to Finkelstein. You stated the Amalgamated Clothing Workers organized the Finkelstein plant? Is that correct?

A. They were trying to organize it.

Q. Did there come a time when the Amalgamated pulled a strike at Finkelstein's?

A. Yes; they did. On the 14th of August, 1935, they pulled a strike there.

1217 Q. What did he do at Finkelstein's, if anything, while the strike was going on?

A. He would come out to the strike headquarters and speak over the loud-speaker system that they had installed there and speak to the members of the plant workers, or speak to the workers as they came out of the plant; and his wife also spoke over that loud-speaker system, urging the members to come out on strike.

1219 Q. Do you know what kind of work or what kind of a business Mr. Walters was engaged in?

A. Since I have known him he did not work at all. He didn't have a job like other people have.

Q. Did he have an office in any building?

A. Not since I have known him.

Q. Did he ever tell you where he was getting his money?

A. He never did. But I often wondered.

Q. Was he always dressed nicely?

A. He was always dressed very nicely, and he lived in one of the finest apartments in the city.

Q. Do you recall the time when Mr. Walters was taken ill?

1220 A. Yes; I do. I remember he did not come to the office for a good while, but when he did come back he told us that he had been ill with some sort of stomach trouble. When he did come downtown he said the doctor was only allowing him out for two or three hours. The last time I saw him was in March 1937, I think. After that time I think he went to bed and never got up any more.

Q. Do you know whether or not a Mr. Walters was friendly with Mike Smith?

A. He was. Mike worked in the same office with me, and he was friendly with both of us.

Q. At any time when Mr. Walters was coming into your office did he ever ask for any of your membership applications or application records?

A. Not to my knowledge.

Q. Did he ever ask to know who the members were of the Amalgamated?

A. He could pretty well tell that when he came to the meetings; I mean to see them; and also when he went out to the strike headquarters.

Q. Would he attend the meetings that were held for the members of the Amalgamated Clothing Workers?

A. He did.

Q. Were there any outsiders permitted to come in there?

A. They were usually open meetings.

1221 Q. Was there a large number of those attending the Amalgamated Clothing Workers meetings who were not members of your organization?

A. They were usually members of the Norfolk Central Labor Union, or the husbands or wives of those who were members.

1222 Q. Did you ever receive an offer to help organize any of the plants around Norfolk from Mrs. Walters?

A. No, I did not. She did used to say that if she worked in Finkelstein's or the Fashion Garments, which is a place in the International Ladies' Garment Workers Union, that she could help us organize from the inside.

Q. While you were employed by the Amalgamated Clothing Workers, do you recall that at any time during that period the

C. I. O. put on a drive to organize the V. E. & P. Company employees?

A. During last year, 1937, in the spring, there was a drive by the C. I. O. to organize the V. E. & P. Co. employees.

Q. Was that the Transport Workers Union?

A. That was only the Transport Workers Union.

Q. Before that time, had there been any drive by any C. I. O. organization to organize any employees of the V. E. & P. Co.?

A. Not that I know of.

Q. Did you at any time ever learn that Mr. Walters was an operative of the Railway Audit & Inspection Company?

A. No, I did not. He was always supposed to be a labor organizer, or at least an aid to labor organizations.

Q. You have heard of the Railway Audit & Inspection Company, have you not?

A. Yes; I have.

1223 Q. Do you know the type of work they do?

A. I think they are supposed to be a spy system, in my knowledge.

Q. You say they are supposed to be?

A. That is what I have been told and read, anyway.

Q. Do you know whether or not Mrs. Walters was ever employed by the Railway Audit & Inspection Company as an operative?

A. I didn't know that she was.

Q. When were you first advised that both of them were operatives of the Railway Audit & Inspection Company?

A. Just since this hearing was going on.

Q. Were you surprised to learn that?

A. I was very much surprised.

1225 T. N. HARRELL, JR., a witness called by and on behalf of the National Labor Relations Board, being first duly sworn,
1226 was examined and testified as follows:

Direct examination by Mr. SPENCER:

Q. What is your full name, Mr. Harrell?

A. T. N. Harrell, Jr.

Q. Where do you live?

A. Chesapeake Beach, Lynn Haven, Virginia.

Q. Have you ever been employed by the Virginia Electric & Power Company?

A. I have.

Q. When did your employment with them begin?

A. Some time in the latter part of April 1936.

Q. In what capacity were you employed?

A. At first I went in as groundman.

Q. When you received employment there were you told whether your employment was temporary or permanent?

A. No; I was not.

Q. And what did you understand about that?

A. Well, at that time I never gave it a thought, to be fair with you.

Q. You say you worked as a helper?

A. Yes, sir.

Q. When you started?

A. Yes.

Q. What rate of pay did you receive?

A. 40 cents an hour.

1227 Q. Did you ever have any raises, either in salary or position?

A. Yes, sir; I had a raise. I think it was approximately six or seven months after I had been with the company.

Q. Was that a raise in position or a raise in salary?

A. Maybe you might term it both. I received a nickel raise in my salary and I was given a commission to get a set of tools and go climbing.

1228 Q. Are you a member of any labor organization?

A. I. B. E. W. and also the company union.

Q. When did you join the I. B. E. W.?

A. I signed the pledge card June 25th, and I was sworn in on August 4, 1937.

Q. Are you a charter member of the I. B. E. W.?

A. I am.

Q. The local here for the V. E. & P. Company employees?

A. That is right.

Q. After you joined the I. B. E. W., were you active in participating in the business of the I. B. E. W.?

A. Very much so.

Q. Did you do any visible act that might tend to show other people that you were active in the I. B. E. W.?

A. I think so.

Q. Will you state what you did?

A. Well, I was constantly talking to other members about the organization; I was constantly seen in the company of Mr. Latham, who everybody knew was an organizer for the American Federation of Labor; I constantly met him at Ben Carp's, which seemed to be a source of all information for Cove Street. I guess that is enough.

1231 Q. Did you attend any other meetings held in the com-
1232 pany's garage there?

A. Yes, sir. About a week, or maybe ten days later, the same thing, practically the same thing happened. We were brought in at four o'clock. I don't remember that time definitely, but it seems to me like Mr. Taylor notified the foremen to bring the men in. I couldn't say, but it seems to me like he did——

Q. Who is Mr. Taylor?

A. I think he is—I don't know. He is an engineer, I reckon.

Q. Well, at any event, you were brought in at four o'clock?

A. Yes, sir.

Q. And what happened at that meeting?

A. Practically the same thing. We went up in the garage, and there was a lot of argument and a lot of stuff, and at that meeting I think it was Mr. Staunton asked Mr. Brown was that going to be a company union, or what was it.

Mr. Brown made the statement, no, it was not to be a company union, but the company did want us to join this union, because we always received or enjoyed the privilege, I believe the exact statement was, of being on friendly terms with the company, and through this organization we could do it.

1235 Q. At the time you received your notice that your employment would terminate shortly, was there an active drive on by the I. B. E. W. to increase its membership?

A. There was.

1236 Q. Were you taking an active part in that drive?

A. Yes, sir.

Q. Who is Mr. May and what position does he hold with the company?

A. He is general foreman of the line gang.

Q. And what did Mr. May say was the reason for that transfer?

A. I was working with Pat Wallace at the time. Mr. May came down the platform that morning. I was standing between Wallace's truck and Mr. Biemon's truck, and also Pat was standing there. I was working with Mr. Wallace. And Mr. May came down the platform from the store room, and he said, "Pat," he says, "I got to make another transfer off Fowler's truck."

Pat immediately asked him, "What kind of a man do

1237 you want?"

Mr. May's answer was he wanted a man that could get up and down a hole and also put out anchors. From that definition I assumed it was one of those so-called third-class linemen. In fact, he left that impression—that was my impression. So, anyway, Pat was looking over the truck, and Mr. May did not say anything for a time. Finally Pat said, "I hate like the devil to do it. I will let you know in the morning."

So Pat tried to go in the truck, and Mr. May started to go back to the store room. Then he stopped, and as he stood there Mr. May made the statement: "I am going to break up that union agitating if I have to fire every man on Cove Street."

By Mr. Gibson:

Q. Do you mind telling me who Pat is?

A. Mr. Wallace, foreman for the Virginia Electric & Power Company.

1239 I had occasion to eat my lunch over in the trouble-shooting room, and one fellow worker over there was Mr. Haskins—anyway, he was a trouble-shooter—and Ward—and Red Ward was a third-class lineman. He went over with me in this trouble-shooting room to eat lunch, and being known as a union agitator, and Mr. Haskins as a stool pigeon for the company, he very quickly picked up on a union argument. Mr. May's office was adjoining that room, and Mr. Holik was out in the hall. Mr. May was sitting in his office. And a union argument started right there in that trouble-shooting room, and that lasted for thirty minutes. And Haskins and Red Ward were both trying to tell me that they did not want—they were not interested in an outside union; but they were interested in the argument about it. So they were speaking in a very loud voice. They wanted to have Mr. May hear it, you know. But it so happened that I already had occasion to tell Mr. May that I was going to join the I. B. E. W. about two days before the Blair Junior High School meeting, and on the day that I did join the I. B. E. W., which was the 25th of June, I also told them that night; so someone in a supervisory capacity with the Virginia Electric & Power Company definitely knew that I belonged.

And I made a statement that if they were merely trying
1240 to raise their voice to let the officials of the company know that I was an I. B. E. W. man, they already knew it. And I went out of the plant—I mean out of the trouble-shooting room and came back over to the garage.

1245 Q. You stated you were a member of the I. O. E. When did you join the I. O. E.?

A. It was after that Blair Junior High School meeting.

Q. Who solicited your membership?

A. Paul Brown.

Q. Did you join the first time you were solicited?

A. No.

Q. How many times would you say you were solicited for membership in the I. O. E.?

A. I guess a half-dozen times; and a lot of times I didn't have a quarter.

Q. Were there any of these half-dozen times you related on company property?

A. That I was solicited?

Q. Yes.

A. Yes, sir.

Q. How many of *of* the half dozen times would you say your membership was solicited on company property?

A. I would say at least three.

Q. Were any of those three times during working hours?

No, sir; I don't think so.

1247 By Mr. SPENCER:

Q. Mr. Harrell, did you ever have occasion to present a grievance to the Grievance Committee of the I. O. E.?

A. Yes; I did present a grievance to the Grievance Committee. To the best of my knowledge it was between March 22 and March 31. I don't recall the exact date.

Q. Was that after you had been given notice of your discharge?

A. That is right.

Q. I show you a copy of a letter dated March 26th and ask if you can identify that paper?

A. That is a grievance; yes, sir.

Mr. SPENCER. I will ask that this be marked for identification as Board's Exhibit No. 32.

1248 Trial Examiner FORT. It may be so marked.

By Mr. SPENCER:

Q. I believe you said this is a copy of the letter sent to the grievance committee?

A. That is right.

Mr. SPENCER. I now offer this in evidence as Board's Exhibit No. 32.

Trial Examiner FORT. If there is no objection it will be received.

Mr. MOORE. That is all right.

(The document above referred to was received in evidence and marked "Board's Exhibit No. 32.")

By Mr. SPENCER:

Q. After filing this grievance with the grievance committee on March 26, 1938, what action was taken with regard to the grievance as presented to them, so far as you know?

A. I asked Mr. Faust or Mr. Knighton, or either one of them. I don't recall which one it was. I asked Mr. Faust and he told me to turn it over to Mr. Knighton and they would take it up.

That was one morning when I went to work. I think it was the morning of the 26th. To the best of my recollection I don't know whether it was the following day or whether it was that afternoon that I was supposed to get an answer. At any rate, I was working with Wallace at the time and Wallace told me that morning that Mr. Faust and Mr. Knighton had talked
1249 to him that morning and they didn't get time or they didn't get through with the business, and he and Mr. Tomlinson were both supposed to meet with Mr. Faust and Mr. Knighton the following afternoon in regard to the grievance.

The following afternoon, as I stated, I was still working with Wallace. I got off of the truck and went into the room right adjoining Mr. May's office where we all receive our mail and there was an answer in there.

So I took it and opened it and read it. And Mr. Wallace hadn't even yet gotten out of the garage.

To the best of my recollection Mr. Tomlinson hadn't even come in. I said, "I said, I guess there isn't any need for you to see him. I have already gotten an answer."

He said, "I don't guess there is."

At any rate, I don't think I saw Mr. Faust or Mr. Knighton that afternoon. But the following morning I asked them just how far did they take my grievance. They said they took it to Mr. Hollik.

I then asked the question if that was as far as it could be taken. He said that was as far as they could go with it.

That is about all I know about it, except the answer was that I was laid off according to seniority, and the rule within the classes. It is so many third class and so many second class and so many first class men made up a gang, and I was the young-
1250 est third class man. But there was a man working on the truck at the same time that was much younger than I was and working on the same truck. So I told them at that time they were false in their statement.

Q. Who was this man?

A. W. H. Ward.

Q. I show you a paper dated March 30, 1938, signed B. E. Knighton, and I will ask you if that is the answer you got to your grievance?

A. That is the answer.

Mr. SPENCER. I will ask that this be marked for identification as Board's Exhibit No. 33.

Trial Examiner FORT. It may be marked.

Mr. SPENCER. I will now offer this in evidence as Board's Exhibit No. 3.

Trial Examiner Fort. There being no objections, it will be accepted.

Mr. Moore. That is all right.

(The document above referred to was received in evidence and marked "Board's Exhibit No. 33.")

1253 By Mr. Spencer:

Q. Mr. Harrell, how old are you?

A. Thirty years old.

Q. Are you a married man?

A. Yes, sir.

Q. Were you married at the time of your lay-off?

A. Yes, sir.

Q. How long had you been married?

A. Approximately two years at that time.

Q. Did Mr. Holik know that you were a married man?

A. He should have known it. He had Nick White taking all the names and addresses of every man, and whether or not they were married, and all that, a few weeks previous to this occasion.

Q. Do you have any family?

A. I have a wife and baby.

Q. Do you own your home?

A. No, sir; buying it.

1254 Q. You are what?

A. I don't own it; I am buying it.

Q. At the time of your lay-off, was it known that you were buying a home?

A. Yes, sir.

Q. Do you know whether or not the management knew that Mr. Judge was a married man?

A. Absolutely, they did.

Mr. Spencer. I believe that is all at the present time.

Trial Examiner Fort. Are there any further questions?

Cross-examination by Mr. Latham:

Q. Mr. Harrell, you stated that you joined the I. O. E.?

A. Yes, sir.

Q. Will you relate for the record the circumstances under which you joined the I. O. E.?

A. Well, it had been talked and rumored all around that that was what the company wanted you to do, and I had been told a number of times by the man who was doing the most of the acting at that time, which seemed to be Mr. Brown—Mr. Paul Brown—and I kept putting it off. I several times told them that I didn't have a quarter. A lot of those times it was true, however, when he would approach me.

So one afternoon, as I was coming out of the washroom, coming down the steps right at the foot of the steps, as you
1255 come down from the washroom, Mr. Brown was standing right over at the curb, and Mr. Tom Crafton was leaning upon the window, right at Mr. May's office. That window was on the street, close out from the washroom, or the steps, coming down from the washroom, and Mr. Holik immediately, when I stepped out on the street, grabbed me by the arm and said, "Come in."

Q. Did you say Mr. Holik?

A. Mr. Crafton grabbed me and said, "Here, Brown, here is a man that hasn't signed up," he says, "sign him up."

So I told Brown at that time I didn't have a quarter, which I didn't, and he said, "Well, you can give it to me later."

Mr. Crafton said, "Well, you can bring that in to me in the morning." I said, "I don't have one at home.

That was the exact statement. So he says, "You sign up, anyway; you can give it to me some time." That was Mr. Crafton.

So I took a card, and I used Mr. Crafton's pencil, and I walked to Mr. May's window in his office and started to sign the card, in other words, on the sill of Mr. May's window, which was concrete, and Mr. Brown says, "That is company property; you can't sign no card there."

I said, "All right," and I picked the card up and I was walking around, and Mr. Brown said, "Sign on Mr. Crafton's shoulder."

1256 Mr. Crafton turned to me and I went over to his shoulder, and I started to sign it, and I got as far as the "T. H.," to sign it on his shoulder, and he said, "Well, he is company property; go somewhere else."

The trouble truck was sitting right in front of the door of the office. I walked to the trouble truck and said, "I am going to sign it somewhere. I am not going to be stopped this time," and I signed it on the fender of the trouble truck which was sitting in front of the door.

Q. Will you relate for the record the circumstances under
1257 which you were hired, and who hired you?

A. Mr. T. F. May hired me, or he recommended me to Mr. Crafton. Mr. Crafton, I think, is the man who actually took the statement. Mr. May recommended me to Mr. Crafton, and, on the previous day, before I was hired, Mr. May has asked me where I had worked, and I began to tell him in an offhand way, and I mentioned the Ford plant here, and he asked me why did I quit them.

Q. I am sorry. I could not hear you because of the streetcar.

A. I told him I had quit on several occasions, but I didn't quit at that particular time, the last time, however. I was laid off in the general lay-off. Anyway, there was a general discussion about the Ford plant, and I proceeded to tell him, and I related a couple of instances in there where there had been some argument or something and what a terrible place it was to work, and I thought if I had to spend my entire life in there I would probably murder somebody, or some similar remark. I was hot-headed, anyway, and I couldn't stand that gaff, and in turn, he made the remark he didn't think that I would have all that stuff to put up with with that company, that they had always gotten along with the men, but at that particular time the foreman was driving them a little bit harder than ever before, he said, "Because we have a lot of work."

1258 But he says, "So far as arguments, I think you will be able to get along with all the men."

But it was generally understood by Mr. May that I was hot-headed, and I made the statement that I could get along with anybody, didn't mind doing my work, always tended my work, but I didn't like to take a lot of crap from anybody, and I would defend myself in any case.

Q. You made that statement when you were hired by the company?

A. Not exactly then, but it was just before I was hired.

Q. To Mr. May?

A. To Mr. May.

1259 Q. Did Mr. May at any conversation with you at his home, at that meeting, or a previous or subsequent meeting, mention unionism to you?

A. I mentioned it to him. It was shortly after this meeting at the Blair Junior High School. I think it was the following night—no; I am wrong. It was the night after this second meeting at Cove Street that I went to Mr. May and I told him I didn't approve of this company union, and I told him that you could get no information whatsoever on the case about it. All that I 1260 could find out was that it was affiliated with the American Federation of Labor, and the company definitely wanted us to join and I didn't think that was sufficient evidence for any man to undertake an obligation of joining a local union.

1261 Q. You mentioned the fact that you worked with Foreman Tweedy?

A. Yes, sir.

Q. Did you ever have any difficulty with Foreman Tweedy?

A. Yes, sir; we did have a little run-in down in Carolina at the time I was down there with him. He docked me for two hours.

or maybe two and a half, or something. I don't know what it was, but he threatened to make me walk in about four miles, but he didn't do it.

Q. What caused that altercation?

A. Well, it had been raining all day. I personally was not with Mr. Tweedy, right under his supervision. I had been put that day by him—I mean, he was not standing over me, to shorten poles that were lying down on the road, Mr. A. L. Griffith and myself. We had gotten ahead shortening poles, and when the shower came, we walked in out of the rain. We didn't do much that day, and at the same time, the rest of the men had worked that day—I don't know, but Mr. L. D. Galimore had made
1262 several remarks that Mr. Tweedy—in other words, he wasn't in such good humor, and, anyway, we finished shortening poles and went back, and it was just about the last two or three poles to set on the line that afternoon, and the shower came up. I believe Galimore was with me, and two or three others, and I said, "I am not going to work in the rain anymore."

But I had made similar remarks to Mr. Tweedy; we had joked and carried along on these lines ever since I had been working with him, and never had any hard feelings whatsoever, but that particular day he jumped at the conclusion, or something, and told me he didn't want me to work—in other words, he wouldn't let me work anymore. He docked me for two hours. I believe it was, or two hours and a half, to the best of my recollection, or it might have been one hour.

1263 Q. You worked with Mr. Fowler?

A. Yes, sir.

Q. Have you had any difficulty with Mr. Fowler?

A. Never.

Q. You worked with Mr. Wallace?

A. Yes.

Q. Had you had any difficulty with Mr. Wallace?

A. Never.

Q. Did you have any difficulty with Mr. Tomlinson?

A. Yes; quite a bit.

Q. Will you explain your difficulty with Mr. Tomlinson?

A. I stated a little while ago that it was after I was put with him this third time, and Mr. May had told him I was under the hammer. It seemed as though we just couldn't get to together after that, because I had not received any definite answer from Mr. May whether he put me under the hammer, and I was still in the dark. I didn't know whether it was Mr. Tomlinson discriminating or Mr. May. I never could arrive at any agreement where we could get along after that. Personally
1264 I have nothing against either one of them.

1270 Cross-examination by Mr. WHITE:

Q. Mr. Harrell, the first meeting to which you referred as being held at the garage at Cove Street at which Mr. Hollik spoke to you—do you recall the date of that meeting?

A. No, sir. As I said, it was the last of May or the first of June.

Q. Was it before or after the meeting downtown that was addressed by Mr. Throckmorton?

A. Before or after? I couldn't say whether it was before or after. I don't know any meeting addressed by Mr. Throckmorton.

1271 Q. You don't know of any meeting of the employees of the company that was addressed by Mr. Throckmorton?

A. I do not.

Q. How soon did the second meeting at the garage follow the first meeting?

A. I don't know. To the best of my knowledge it was maybe two weeks or probably a little longer.

Q. Were all of the employees at Cove Street present at that meeting?

A. I couldn't definitely state whether they were all present or not.

Q. Were the majority there?

A. I should say so.

Q. How large would you estimate the crowd to be?

A. I imagine around 85 to 90 people.

1272 Q. Who acted as chairman of the meeting?

A. Mr. Brown, to the best of my knowledge; I guess you would call him Chairman.

Q. What took place at that second meeting?

A. There was some discussion about voting. There was a fellow by the name of W. O. Morris from Portsmouth had come over to represent the line department, or whatever it was over there to represent at Portsmouth, was to the best of my recollection 21 votes that he was to swing either way that Cove Street went.

Q. Did he represent just the line department or did he represent line and meter departments both?

A. I couldn't tell you.

Q. Was there a vote taken?

A. Yes.

Q. How was the vote taken?

A. Well, there was a paper there that you would sign your name to and put on it whether it was outside affiliation or whether it was company union, or whatever you might desire.

Q. Or C. I. O.?

A. Yes, sir; that was in there.

Q. How were the votes counted?

1273 A. To the best of my recollection Mr. Foust and Mr. Griffith, and I think there was someone else, but I don't remember who it was.

Q. Mr. Brown?

A. I am inclined to believe Mr. Brown was the 3rd party, but I wouldn't swear to it.

Q. At any rate, there were three people who counted the votes?

A. Yes.

Q. Did they announce the result of the votes immediately after they counted the ballots?

A. I don't know, to tell you the truth, whether it was immediately after or not. To be fair with you, I voted and left. I didn't hear the announcement of the votes, but I went downstairs to smoke, and when I came back I did see that there was a fire at the head of the room. The votes were burned. But I never did know definitely just how they went. I heard, but I don't know. I heard it went that way.

Q. You heard how it went?

A. Yes.

Q. But you were not there?

A. I heard how the votes went but I didn't take any account of it.

Q. When was the next meeting of the employees of the

1274 Virginia Electric and Power Company that you attended?

A. June 22nd at the Blair Junior High School.

Q. You had not attended any meetings between those times?

A. No, sir.

Q. At that meeting had you already signed a membership card with the I. O. E. or did you sign one after that?

A. I had signed it.

1275 Q. You recall what took place at the meeting, don't you?

A. I couldn't say definitely I do. You know there was a discussion before it was carried on. I couldn't swear definitely the facts.

Q. You heard Mr. Elliott's address?

A. I remember I was the man who got up and said I would just as soon hear his lies as yours.

Q. You are the man who said that?

A. Yes.

Q. Did you hear Mr Reutt's address after that?

A. Yes.

Q. Do you remember whether a constitution and bylaws was read?

1276 A. Parts of them were.

Q. Do you remember what parts?

A. No. I didn't pay much attention to it. I was more interested in Bob Elliott's talk than anybody else.

Q. You agreed entirely with Mr. Elliott that night, didn't you?

A. No, not entirely on some points. On some I did.

Q Did you agree with Mr. Reutt?

A. No.

1277 Q. Did you take part in the election of representatives for the electric division committee?

A. I voted one time for Bill Faust. That is the only time I remember ever voting.

Q. You did take part in that election?

A. I did.

Q. And you voted for Mr. Faust?

A. Yes; one time.

Q. Why did you vote for Mr. Faust?

A Well, I thought that Bill was going to make, if there
1278 was anything in the world in the company union, it come out. I thought Mr. Faust would bring it out on the right side. And I felt like he was the best man we had down there, and I had a great deal of confidence in Mr. Faust.

Q. So you voted for the man you thought was the best man?

A. Yes.

1280 Q. Coming up to the manner in which you signed up, on your first examination I believe you said you did not sign your card on company time or on company property? Isn't that right?

A. No; it wasn't on company time but it was on the V. E. P. truck.

Q. In other words, you put it on the truck and wrote your name?

A. Yes.

Q. And, of course, the truck was parked in the street?

A. Yes.

1284 Q. But you do not know whether the decision to include
1285 you among the linemen was made the same day as in regard to the other people?

A. I wasn't making the decision; so I wouldn't know.

Q. You are not in a position to deny the statement, then, that, as a matter of fact, you were not put in line for this linemen increase until some time after the other men who were classified?

A. It couldn't be long. I don't know. I was notified of it before I came back to work.

Q. And you came back to work on what date?

A. August 19th.

1294 Q. You had some discussion with Mr. Faust relative to your lay-off after the grievance committee reported to you on March 30th of this year?

A. I believe I did.

Q. Would you mind stating what you asked Mr. Faust at that time?

A. I asked him if he had carried that grievance as far as he could. I also stated that it was not right, that there was third-class linemen there younger than I was, and I also stated that I had been told so many times that the I. O. E. was affiliated 1295 with the American Federation of Labor, and that they could do so much about handling grievances, that they could get a man from the Labor Board; so I asked him if that was as high as he could carry it, and I mentioned that to him and asked him if he could carry it any higher.

Q. What did he tell you?

A. He told me that was as high as he could carry it, and that was all they could do, that Mr. Holik had definitely made his statement.

1296 Q. Mr. Judge testified, and I believe you did, too, that there was a request made by the members of the I. B. E. W. that the I. O. E. should hold regular meetings. What was the reason for that request?

A. Primarily, if we couldn't get something one way, we would try it the other. In other words, my idea was to break the company union down, do anything that I could to break it down, and I made that statement.

Q. You made that statement to whom?

A. Most anybody that wished to hear it; it didn't make any difference.

1297 Q. Was that the reason why you requested to have these regular meetings of the I. O. E.?

A. I personally did not have any hand in the request. I was not at the meeting. But I made a statement previous to that to that effect; that I would do that.

Q. So your idea of holding regular meetings was that you were trying to wreck the organization; was it?

A. Not necessarily to wreck it, but kind of make it vanish.

Q. Is there a distinction between those two?

A. Well, your term is a little rough.

Q. In other words, your idea was to make it painless, if possible?

A. That is it.

Q. I may have misunderstood you. Mr. Faust never made any statement to you that the I. O. E. was affiliated with the American Federation of Labor, did he?

A. Yes, sir.

Q. When did he make that statement?

A. I could not tell you. He made the statement a number of times. That was all you could get out of him—"Affiliate with the American Federation of Labor."

Q. When was that?

A. Any time you might ask Mr. Brown what was the base of his organization.

1298 Q. When and where did you hear Mr. Faust or Mr. Brown make those statements, and who was present?

A. I have heard Mr. Brown making them on several occasions.

Q. Just specify the occasions.

A. Well, I want to be fair with you, now. I was picking Mr. Brown, and I did not choose anyone to go with me when I went. I wanted information for my own personal use, and I had gotten statements from them, and I have used them: I am using them now.

Q. In other words, you went to Mr. Brown, and when just you two would be present you got statements from him.

A. Not necessarily when just us two would be present: just that there would be a conversation while he had a little confidence in me. Do you understand?

Q. I am afraid I don't.

A. In other words, when Mr. Brown and myself were the only ones present at one time Mr. Brown had a little confidence in me, see? and I was trying to get his viewpoint; to get collective bargaining or company union out of him, for my own personal use, to be used later, such as now.

1299 Q. Is the I. B. E. W. affiliated with the American Federation of Labor?

A. Absolutely.

Q. Were you a member of the I. B. E. W. during all those times?

A. Yes, sir.

1300 Q. You were a member of the I. B. E. W. during all those when those conversations took place?

A. I don't recall. I wasn't sworn in until August 4th.

Q. You said you signed your pledge card earlier than that. June 5th.

Q. And you made no secret of the fact that you had done so?

A. No, sir.

Q. Anyhow, both Mr. Faust and Mr. Brown knew that you had been pledged in the I. B. E. W.?

A. I guess so.

Q. Then, why would they make a statement to you that the I. O. E. was affiliated with the American Federation of Labor if it was not?

A. Why would they do it? I personally don't know. I want to retract my statement. Mr. Brown, I don't think, knew—I don't know—unless it was through the organization, that I was personally a member of the I. B. E. W.

Q. Well, Mr. Faust knew, did he not?

A. I think he did.

Q. Well, why would he make such a statement like that to you when both of you knew it was not true?

A. I could not read Mr. Brown's mind. I could not answer that.

Q. So you do not know why those statements were made to you?

A. I guess they were made to make me support it.

1301 Q. As a matter of fact, you were one of the very first to join the I. O. E., were you not?

A. And I was one of the very first to start cutting my throat.

Q. How did you cut you throat?

A. I said started to cut my throat.

Q. In other words, you were deliberately trying to wreck the I. O. E. ever since you were in it?

A. And I am still trying to make advantage.

1303 Cross-examination by Mr. GIBSON:

Q. After the meeting at the Blair Junior High School you said you told Mr. May that you didn't approve of any organization that wasn't affiliated with a national union and that you were going to join a national union? Is that true?

A. No; I didn't say I didn't approve of any organization. I said I didn't approve of the organization that was trying to be formed at Cove Street at that particular time.

Q. And you likewise told him you were going to join a national union, didn't you?

A. Now, when was that.

Q. The first conversation you had with Mr. May after the meeting at the Blair Junior High School.

A. The first meeting after the meeting at the Blair Junior high School?

Q. Yes.

A. I told him I had joined.

Q. You told him you had joined?

A. Yes.

Q. What did he say about that?

1310 A. He said he personally saw no use of any man joining an outside union; that he had never seen any good derived from one, and he was under the impression when I came with the company I needed a job and was going to fall in line accordingly, and he was very much surprised at my joining an outside organization.

Q. Did he say you couldn't remain a member?

A. No.

Q. He left that to your own individual free choice?

A. Yes. He also stated he didn't want to be quoted.

Q. You joined the I. B. E. W. in June, didn't you?

A. No: I didn't join then.

Q. Of 1937?

A. I signed a pledge card in June.

Q. That is what I mean.

A. Yes.

Q. When did you do that?

A. June 25th.

Q. When did you have this conversation with Mr. Crafton
1311 and Mr. Brown when you signed up a card on the company trouble truck?

A. At the time I signed it.

Q. That was early in June?

A. Yes, sir.

Q. Did Mr. Crafton tell you that you had to join the I. O. E.?

A. No; he didn't tell me I had to. He said "Here is a boy that hasn't joined." He said, "Sign him up, too." That is all he said. That was principally all he said. He might have said something else, but it had no bearing.

Q. Did he leave it to your choice as to whether you would join or not?

A. Naturally he did; yes, sir.

Q. You insisted upon joining?

A. How is that?

Q. You insisted upon joining?

A. What do you mean by "insisted upon joining"?

Q. You were stopped once because that was company property on the window sill? Isn't that right?

A. Will you ask that question again?

Q. Mr. Brown stopped you once from signing a card because that was a company window sill?

A. That is right.

Q. He stopped you again because Mr. Crafton's shoulder was company property?

1312 A. That is true.

Q. And the next time you said "I am not going to be stopped this time?"

A. I signed that on the fender of the trouble truck.

Q. And you said "I am not going to be stopped this time"? Isn't that true?

A. Yes.

1317 Q. What did you mean by saying that several people said you were a hot-headed person?

A. I think you would find several around the V. E. P. who would say that.

Q. It is not generally believed around the V. E. P.?

A. I think so. After the discrimination that was started against me for being a union agitator I only emphasized my points, and I was termed as hot-headed.

Q. You told your foreman that when you were engaged, did you not?

1318 A. I didn't understand the question.

Q. You told your foreman that when you were engaged: did you not?

A. I did to Mr. May before I was hired.

Q. Did you say you had an altercation with M[illegible]skins?

The WITNESS. I had quite an argument with [illegible]ns. It was a discussion, not an argument, with Haskins and [illegible]. Ward.

Q. Did you say you had a run-in with Mr. Tw[illegible]?

A. I said there was a little difficulty there.

Q. Did you use the term "run-in"?

A. Yes; I think I did.

1319 Q. Did you testify you told Mr. May that either Mr. May or your foreman, Mr. Tomlinson, was lying?

A. I did.

1334 Redirect examination by Mr. SPENCER:

Q. Who is A. C. Lucas?

1335 A. He is known by me as the "minute man" of the company union. I think he is known as the recording secretary. He asked me. He said, "Now, you put your nose in on this, and what has the I. B. E. W. been doing for you, and what is it going to do?

"Well," I said, "I don't know exactly what it is going to do or what it has done, but I would like to ask you one question on that subject—if you can tell me what the I. O. E. organization has done for me," and I said, "have you anyone out looking for me a job? Are you paying anybody running around the street looking for me a job?"

He said, "No; why should we pay anyone to look for you a job, when we are the guys that got you fired?"

I asked him what he meant, by definition, and he went on to say in respect to my calling him a "minute man," that there was one sure thing that he was sure of, that the company would get along much better since a few of us guys that were making all of these minutes in the company union were gotten rid of.

1338 Re-cross-examination by Mr. WHITE:

Q. Mr. Harrell, in what form did this discrimination take of the members of the I. O. E. against you?

A. What is that question?

Q. What form of discrimination was this on the part of the I. O. E. members against you?

A. I think it was in an indirect way, by running to the management, and the management, in turn, doing the discriminating.

Q. Now, who do you think ran to the management, and why?

A. Mr. White, that would be a hard thing to say.

Q. Well, you stated a rather hard conclusion there, and I would like to have a few facts to see what it is based on.

A. It seems very evident that everything that happened in the company union meeting was back to the office before the man could get there.

Q. Give us a specific instance of that?

A. I will tell you one instance, and I am sure the company will be glad to hear about it.

The incident is when I was in the cable gang with Mr. Brockmeyer. I had orders from Dr. Saunders not to bend or do any work whatsoever. I sat around on these manholes and clamped these manholes. It seems to me I was not very

1339 appreciative, and I was told several times I was not hospitable by Mr. Winn. Anyway, there was an argument arose shortly after that, or during that time that I was in the cable gang on the question of wages. I says something about I should have another nickle, or something, in an offhand way, and Mr. Brown made the statement, under his voice—that was Mr. Duke Brown, not Mr. B. D—that I was not worth what I was getting while I was in the cable gang, but he didn't intend for me to hear it.

I, in turn, called his hand on it, and I told him I overheard his statement, and asked him why he wasn't man enough to say it. Then I, in turn, called him a liar, and he bends over for a chair, and though he was taking a chair to hit me with, and told me not to call him a liar. I think—I am not sure, and I wouldn't like it to go in the record—I believe there was a little more profanity used there. Anyway, I was a little bit quicker on the chair, and I turned to him and told him not to pick up his chair to use it, or I would be forced to use mine.

Mr. Brown and I remained friends after that. There was a day or two that we were not so cordial, but as a result of it, it never amounted to anything; but at a later date, another argument came up.

I went in the garage—I don't recall whether it was the following morning or two mornings after that. I said,
1340 I understand they are bringing a witness against me, Mr. Henry Turner."——

Q. Who was bringing a witness against you?

A. The company, at this specific date.

Q. I see. What was it?

A. I had an argument with him.

The WITNESS. It related back then to just before I was laid off by the company. I was called in Mr. May's office, and he told me that that was in relation to another argument that was also depending on the argument that happened by the company union meeting, about the same man.

That was three that happened in conjunction with the
1341 same one. That happened up there.

I was called to Mr. May's office, and he told me that I had insulted this guy, and all that, and he explained about that, and he said he intended to have a heart to heart talk with me, but he just never had done it, and I think Mr. Crafton will verify it. I think he was taking a few notes. He wanted to have a heart to heart talk with me, but just never had. So then he kept hinting to me that it was not only trouble with men on the Virginia Electric & Power Company properties. In other words, that seemed to be the drift of what he was talking about. It was not the argument that he was calling me in for then, for the one that happened the day previous. It was the one in the company union meeting.

He said, "You have been in trouble with the men on the outside," and I naturally knew that I had not, except in the company union meeting, and I kept hammering at him and asking him just who he meant and what time, and he finally told me that it happened in the I. O. E. hall, and that if I thought that stuff didn't get back to the management, it did.

"Yes, sir," I said, I am very well aware of the fact.

He also stated, "If I couldn't fall in line with the men in the Virginia Electric & Power Company"—he didn't say the I. O. E., however—"I might just as well look for another job."

I said, "Thank you, Mr. May," and walked out, and that
1342 was all.

Q. The specific reason that you were up there to talk to him at that time was the difficulty you had had with another employee on the company property, though; was it not?

A. It all related back to the first one, and the first one seemed to be the one he wanted to dwell on the most. To show you another point of discrimination: before I got in the office, he had already determined his side of it, and I asked him if he was accusing me before he ever heard my opinion. I told him: "You heard his side of it, haven't you?" He said, "Yes."

I said, "That is all that is necessary; my side doesn't count."

That day he told Foreman Wallace to put me on the digging set and keep me on there. At that time I was working with a crew of half niggers and half white people. In turn, Wallace told me that I was to be put on the digging set. In other words, a nigger was to be taken away from the digging set, and he was going to take my place on the truck, and I was to be set digging holes.

By Mr. GIBSON:

Q. I would like to interrupt you if you do not mind my asking you this: Was that the time that you threatened to hit a man with a hammer?

A. I have never threatened to hit a man with a hammer.

Trial Examiner FORT. Are there any further questions?

1343 By Mr. WHITE:

Q. Was it a shovel? Did you threaten to hit a man with a shovel?

A. No, sir. I did threaten to hit him, though, if you want to know that.

By Trial Examiner FORT:

Q. Did he need it?

A. Absolutely he needed it. Three times on the same occasion he had approached me, and I left, and he came right over where I was digging a hole, with a nigger, and he got the man that had never been up a pole, and the nigger was put doing my work and I was put doing his. He was invariable after me, relating back to the argument I had with Henry Turner. That relates back to the argument I had with Duke Brown in the company union office.

By Mr. WHITE:

Q. With the exception of these personal difficulties that you had with various people, did the members of the I. O. E. discriminate against you in any way?

A. I say indirectly, through the management of the company. I think everything that I was doing was carried to it, and then I was discriminated against by the management of the company, through and by the I. O. E.

Q. But was not that the fault of these various personal difficulties that you had with your fellow employees, when you thought those were carried back to the management, and that resulted from the management trying to discipline you? I want to know if there was anything other than that that caused you
1344 to think you were discriminated against by the I. O. E.

A. No; frankly I don't think I had many enemies up there, until today, till I told the truth, and the truth hurts, you know.

Q. You got eleven and a half cents increase per hour in pay under the contract; did you not?

A. Yes; that is right.

1377 Mr. SPENCER. Mr. Heath.

EDWARD HENRY HEATH, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. SPENCER:

Q. What is your full name, Mr. Heath?

A. Edward Henry Heath.

Q. And where do you live?

A. 2927 Broad Creek Road.

Q. Is that Norfolk, Virginia?

A. Norfolk, Virginia; yes, sir.

Q. Have you ever been employed by the Virginia Electric & Power Company.

A. Yes, sir.

Q. And in what department are you employed?

A. In the trolley department.

Q. What class of work do you do in the trolley department?

A. Drive the truck and wait on the three men; keep the truck in supplies.

Q. When did you start to work for the V. E. & P. Company?

A. I think it was in '28. It will be ten years the 13th day of this coming August.

1387 Cross-examination by Mr. WHITE:

Q. Had you ever attended any meetings of the I. O. E. when you joined it?

A. Yes.

Q. Where did you attend?

A. At the Arcade Building.

Q. That is the regular office maintained here by the I. O. E., isn't it?

A. Yes, sir.

Q. Who was chairman of those meetings?

A. Mr. Faust there was up there.

Q. Have you ever seen anyone at those meetings who was not a member of your organization?

A. What do you mean? Do you mean the outside union?

Q. I mean did you ever seen anybody at these meetings who was not a member of the I. O. E.?

A. I don't know about that.

Q. Do you know?

A. They could have been in there and I wouldn't know them. There are fellows working at the plant right now whose names I don't know. I don't know that secretary's name up there. He has been working there for ten years but I don't know his
1388 name yet.

Q. Do you know his face?

A. Yes.

Q. And you know he works there, don't you? You know that?

A. Yes.

Q. Have you ever seen anyone at the meetings that you had reason to believe was not a member of the I. O. E.?

A. No; I have not.

Q. Have you seen in any of those meetings any evidence of company interference or domination when you were there?

A. It looks to me like when you take anything to a vote four times to get it passed, like somebody is dominating.

Q. Who did the voting?

A. We voted on that 40-hour week and the raise in pay and at 44 hours. We voted on it and passed it by a majority. Then the next time we went up there that was brought up again, and Mr. Faust refused to go to the management with it. He said he would not take it up there and ask for something for nothing. Then at the third meeting when it was brought up again they were about to vote on it again and McDermott brought up a motion to lay it over until the next meeting and not to vote on it, but give everybody a chance to think it over for two weeks or three weeks, or whatever it was, and set their minds on how
1389 they wanted to vote. And they were pulling it backwards and forwards up there.

When we went up there the fourth time the room was full. Every colored fellow that worked at Cove Street was there. And, naturally, they overvoted and carried it their way.

Q. Were they members of your voting section?

A. I guess they were. I guess they pay their money too.

Q. Do you think they have a right to vote?

A. Yes. They had been up there all of the time.

Q. Didn't you make a statement there that you were not going to attend another meeting as long as they had the colored people there?

A. That is right. I have been up there one time since, but I was asked to go up there for a special cause.

Q. And what was that cause?

A. Go up there and sit there dumb and listen to what they say and say nothing.

Q. For what reason?

A. I just told you to go up there and sit there dumb and don't know nothing and don't say nothing.

Q. What were you supposed to do with the information that you gathered at that meeting?

A. If I got any information I could tell you what I would have done with it and what I did. I didn't get any, and therefore, I can't tell you. I didn't get it.

1390 Mr. WHITE. The witness has not answered the question, Mr. Examiner.

Trial Examiner FORT. I think it is a fair question. He asked what was the purpose in going there.

The WITNESS. What does he want me to answer?

Trial Examiner FORT. Just whatever it was.

The WITNESS. I went up there to see what they was going to say. Doesn't that answer it?

By Mr. WHITE:

Q. Why did you want to find out what they were going to say?

A. Naturally if a man belongs to an outside union as long as I have, wouldn't he have curiosity; if for nothing else? Wouldn't he go up there for curiosity, if nothing else?

Q. Did you go up there for the purpose of trying to stir up trouble in the I. O. E.? Was your motive similar in going to that meeting to the one that Mr. Harrell expressed on the stand yesterday?

A. No.

Q. You did not intend to try to break up the I. O. E.?

A. My intention was to break it up if I could.

Q. Then you did have the same motive?

A. To a certain extent.

1391 Q. Did you ever make a motion in good faith while you were up there or were all of the actions taken at the meeting with the view to try to create a disturbance and break up the I. O. E.?

A. I don't think I ever made a motion up there. I am satisfied I did not.

Q. You referred a little while ago to a motion made to defer action for two weeks on the question of the change in hours and rate of pay. Do you know who seconded that motion?

A. No; I don't remember.

Q. Would it refresh your recollection if I told you that Mr. Harrell seconded that motion?

A. I wouldn't say positively.

Q. You don't remember?

A. No, sir.

Q. You are still a member of the I. O. E.?

A. Yes.

Q. When was the last meeting you attended?

A. I don't remember now, to tell you the truth. I don't remember when the last one was. I have been there once since the time all of those colored people was there. That is the only time I have been up there.

Q. Were the colored people up there the next time you were there?

A. Seven or eight of them was up there: yes.

1392 Q. You have not been up there since that time?

A. No, sir.

Q. Did you attend a meeting up there on May 5th of this year?

A. I don't recall no dates.

Q. Do you remember at that time a question was raised at the meeting, that is, at the last meeting you attended, as to whether or not Mr. Faust, your representative, was company dominated?

A. I remember him asking that question.

Q. Do you remember a vote was taken on that?

A. He asked those who thought he was to stand up.

Q. Do you remember how many stood up?

A. No.

Q. You did not stand up?

A. No, sir.

Q. Do you remember when the question and the vote came up? Do you remember when the vote on the question was taken as to whether or not the organization was in any way company dominated?

A. I didn't stand up then: no, sir.

Q. A vote was taken, was it?

A. Yes.

Q. Do you remember whether a vote was taken by those present on whether or not they felt the organization had

1393 been a benefit to them?

A. Yes, sir.

Q. Did you vote on that question?

A. No, sir.

Q. Did you vote the organization had not been of benefit to you?

A. I didn't vote either way.

Q. Did you have an opportunity to vote also as to whether or not you were satisfied with the way the organization was being run?

A. I didn't vote either way.

Q. You didn't vote either way?

A. No.

Q. You just sat there?

A. Yes, sir.

Q. You remember a very substantial majority voted that they were satisfied with the organization and the way it was run, don't you?

A. I couldn't say.

Q. You were there?

A. I couldn't say how may stood up or nothing about it. I didn't count them.

Q. As a matter of fact, isn't it true only two men voted that they were dissatisfied with the organization?

A. I wouldn't say.

1394 Q. You don't even remember that?

A. I wouldn't say how many because I didn't count them.

Q. Yet you were up there for the purpose of getting information to carry back to your I. B. E. W. local?

A. Yes, sir; if you want to term it that way.

By Mr. MOORE:

Q. You remarked that you had been a member of a national union for 35 years?

A. Yes, sir.

Q. What union is that?

A. The Trainmen.

1395 Q. The Trainmen's Union?

Yes.

Q. What is the name of it?

A. Brotherhood of Railroad Trainmen.

Q. Is that affiliated with the American Federation of Labor?

A. No. That is one of the Big Four Unions.

Q. Have you ever been interfered with in any way by the management of the company because of your being a member of that organization.

A. No, sir. I don't guess they even knew it.

Q. At any rate, you have never been interfered with?

A. No.

Q. You never tried especially to keep it secret, did you?

A. No, sir. The men I was working with there every day didn't know it.

Q. You are not a member of the I. B. E. W.?

A. Yes; I am.
Q. You are a member of that too?
A. Yes.
Q. When did you join that organization?
A. I joined it in September.
Q. What date?
A. The first.
Q. You joined September 1, 1937?
A. Yes, sir.

1396 Q. Have you ever been interfered with because of your connection with that union by the management?
No, sir.

1398 Q. Who first told you that proposition was coming up or was going to be brought up in the meeting there?
A. Well, we voted on it in our meeting.
Q. Whose meeting?
A. The I. B. E. W.
Q. So that is the place it started from?
A. Sure.
Q. Who in the I. B. E. W. meeting first proposed it?
A. I couldn't say that.
Q. Did Mr. Latham?
A. I couldn't say that.
Q. Can you deny that he did?
A. Just like I say, I wouldn't say who it was proposed it up there.
Q. Don't you know that the motion was never made in good faith in the I. O. E. meeting?
A. It was made in good faith.
Q. What were the grounds for it? Just state for the record what was the justification for the request that the men be paid for 44 hours when they worked only 40 hours?
A. The motion was made to increase the pay to take care of it, not to work 40 hours and get paid for 44 hours; but it was to increase the pay to take care of the 44 hours, so that you would draw the same money for the 40 hours that you were for the 44 hours.

1399 Q. Is there any doubt about the fact that in the I. B. E. W. meeting that Mr. Latham or somebody else in that meeting concocted this idea that it would be a good thing to put it out in the I. O. E. meeting to worry the boys? Wasn't that the idea?
A. I don't know nothing about no worrying.
Q. How is that?
A. I don't remember nothing about no worrying.
Q. What was the real purpose? Did you expect to get it from the company?

A. We could try

Q. Did you really hope to get it?

A. You don't know what you can do until you ask for it.

Q. Did you as a fair man expect to get any such proposition as that through?

A. No; I didn't expect to get it.

Q. Then, what was the purpose in asking for it?

A. You can ask for it and try to get it.

Q. It was never proposed anywhere in good faith, was it?

A. It was proposed in good faith to try to get it up there.

Q. What was the idea? What was the meeting it originated in? Did it originate in your I. B. E. W. meeting?

A. I couldn't tell you that. I didn't put down the date.

Q. You don't know when it was?

A. Well, I didn't put down the date. I couldn't tell you
1400 that.

Q. The next time you went back to your I. B. E. W. meeting, did the boys sort of laugh about it and chuckle and say "Gosh, we had a good time over there"?

A. After the man said he wouldn't go up there and handle it?

Q. What did you all say when you got back to your meeting?

Mr. SPENCER. I object to that Mr. Examiner.

Mr. MOORE. It has quite a bearing. I ask that the witness answer the question.

The WITNESS. Well, pop it to me and I will answer it.

By Mr. MOORE:

Q. Didn't you all have a good time laughing about it?

A. No; we didn't. We didn't go up there to play at that meeting.

Q. What was said at your meeting about it?

A. We thought it was all over, and there was practically nothing said about it. Well, they had voted on it and we thought that was all there was to it.

Q. You never did expect to get it?

A. We could at least go up there and ask for it after we voted it through to do it. That was his duty to do it.

1401 Q. You all had quite a good time about that after you got back from your meeting?

A. No; there was no good time about it. I wouldn't say it was even mentioned after we got back.

Q. Oh, it was not mentioned up there?

A. I wouldn't say it was.

Q. There was no report made to your meeting on that?

A. No.

Q. It came out of your I. B. E. W. meeting?

A. It had been voted by the majority. Why keep on talking about it?

Q. You thought you had all done a good job, then, in proposing this idea?

A. We done a good job; yes.

Q. Let us make the record perfectly clear on that. What reasons were assigned in the I. O. E. meeting by Mr. Davis for any such motion as that? Why did he say that was the proper thing to do?

A. I can't read his mind and tell why he said it.

Q. Did he give any reasons?

A. He said other companies—there was other companies was paying, working forty hours a week, and the pay had been taken care of by raising it so as to get paid for 44.

Q. And that was all he said; was it not?

A. That is all I remember him saying.

1402 Mr. MOORE. That is all.

By Trial Examiner FORT:

Q. Mr. Heath, when you had this discussion in the I. B. E. W. meeting, was that in the public meeting that you discussed it?

A. I reckon it was 40 or 50 men——

Q. I mean, was it an open public meeting?

A. No, sir.

Q. Was it supposed to be generally known what you were discussing at that meeting?

A. No, sir.

Q. Outside of that meeting?

A. No, sir.

Q. Can you conceive of any way in which that information could have gotten out, information as to what happened at the meeting?

A. Mr. Examiner, there is a whole lot of things gets out. We have been trying our best to find out how it got out.

1404 By Mr. MOORE:

Q. So far as you know, when you testified here a moment ago, was that the first time that the fact was disclosed and made known to other people generally that this 44-hour pay for 40 hours' work started in the I. B. E. W., or was today the first time you ever knew about that being made known to anybody else, that it came from the I. B. E. W.?

A. It was general talk all around the streets.

Q. When?

A. All the time after we had it up there.

Q. Why was that so?

A. That is the part I don't know. I would like to know myself.

Q. Was it talked about that it was not a sincere proposition?

A. I didn't hear nothing about that; no.

Q. You did not hear about that?

A. No, sir.

1405 Q. It never struck you that it meant that you were wanting to be paid for four hours that you never worked?

A. It wasn't asked for that way. It was a raise of pay to take care of it, like the Telephone Company does for men working forty hours, and their pay was raised to take care of the 44.

1406 Q. They got an increase of pay for 40 hours' work; they were not paid for 44 hours.

A. That is what we were asking.

Mr. MOORE. That is all.

Mr. SPENCER. That is all.

By Trial Examiner FORT:

Q. Will you explain a little more about this 40 and 44 hour matter?

A. We voted for to work 40 hours a week instead of 44, and the pay would be increased enough to take care of the four hours that we would lose.

Trial Examiner FORT. That is all I have.

Mr. WHITE. I would like to ask you another thing, Mr. Heath.

By Mr. WHITE:

Q. Was not that original motion made by Mr. Judge and seconded by Mr. Davis, to have 40 hours' workweek pay for 44 hours, a workweek to consist of five 8-hour days?

A. That is where there was a misunderstanding about it up there. That is the reason they brought it up for a vote the second time. They pushed the first one up again. There was a misunderstanding between Mr. Faust and Mr. Davis, and Mr. Davis explained it fair enough, that they were to work 40 hours a week, and a pay increase enough to take care of the four hours that we were losing. It got down to 40 hours and paid for 44.

Q. What was it that Mr. Faust told you he would refuse to ask for?

1407 A. Forty hours a week and get paid for 44.

Q. That is exactly what he told you he refused to ask for?

A. Yes.

Q. Did he not tell you that he would be willing to ask for it if the men voted that way, to have the workweek reduced to 40 hours, and the hourly pay rate increased, so that your compensation would be the same for 40 hours that you had been receiving for 44?

A. That is the way the motion was made on the floor.

Q. You did not answer my question. Did not Mr. Faust tell you that he was willing to go and bargain for that if the men wanted to vote that way?

A. I didn't hear him say that.

Q. You did not hear him say that?

A. No, sir.

1446 P. L. ATKINS, JR., a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. SPENCER:

Q. What is your full name, Mr. Atkins?

A. P. L. Atkins, Jr.

Q. And what is your address?

A. 829 West 28th Street.

Q. Norfolk, Virginia?

A. Yes, sir.

Q. Are you an employee of the Virginia Electric & Power Company?

A. Yes, sir.

Q. When were you first employed?

A. September of 1927.

Q. In what department of the Virginia Electric & Power Company are you employed?

A. Transportation department; bus operator.

1447 Q. Did you see any posters posted on company property in regard to a meeting to be held on company property by the employees of the bus and car department?

A. I did. There was a large poster posted in the dispatcher's room that a meeting would be held in the Y. M. C. A. To the best of my knowledge that was some time in May—the first of May, or something like that.

Q. When you say Y. M. C. A., what Y. M. C. A. are you referring to?

A. The V. E. P. Y. M. C. A. It is upstairs over the dispatcher's office.

Q. Did you attend that meeting?

1448 A. I did.

Q. Did you attend the morning meeting or the afternoon meeting?

A. I attended the morning meeting.

Q. Will you tell us just what took place there?

A. Well, the first thing after I got in there there was a crowd. It didn't seem like anybody knew to take charge of the meeting.

Mr. Reutt got up and said a word or two, and about that time Mr. Elliott said that he would like to read this Wagner Act. He had a copy of it there.

There was a little discussion about this, and finally it was decided that he would read it. So he read the Wagner Act through there and about what could be done, and all, and I believe he had made up a petition to present to the company. It was either that meeting or one a little later. He drew up this petition asking for more pay and a little better conditions. It was either that meeting or the meeting following that I attended. And practically all of the men in the hall signed that petition to present to the company.

That is all that had taken place, with the exception of they did have a hand-raising vote to select a committee that would go with this petition to the superintendents to try to carry it up to Mr. Holtzclaw and discuss it.

1450 Q. Now, at the first meeting did you see any persons there who occupied a supervisory position with the company?

A. If I remember correctly, there was Mr. Williford was in there; in fact, I think he opened the meeting with a prayer. He is secretary of the "Y." I think Mr. Bishop was in there also. After this opening of the meeting they were asked to leave the room, which they did. There also was one of the dispatchers.

Q. Who was the dispatcher?

A. Mr. Fields was in there.

Q. Who?

A. Fields.

1451 Q. Are you a member of any union?

A. Yes.

Q. What union are you a member of?

A. I am a member of the Amalgamated Association of Street, Electric Railway; also the I. O. E.

Q. Have you ever been a member of any other union since you have been employed at the V. E. P. Company?

A. Yes, sir.

Q. What union?

A. A member of the Transport Workers, an affiliation of the C. I. O.

Q. Do you recall attending a meeting of the C. I. O. in about the first week in June, 1937?

A. I do.

Q. Do you recall seeing Inspector Edwards present and in close proximity to the place where the meeting was held?

A. If I remember correctly, that meeting was held in a half of the restaurant, which was known, I believe, as the Virginian Res-

taurant, right beside the company building; and then directly across the street I saw Mr. Edwards standing there, walking up and down; also he was sitting on a bench in front of the
1452 Crystal Restaurant, which is diagonally across the street from the Virginian, noticing each and every one that went into the place.

Q. How long did Mr. Edwards maintain this watch over the cafe where you were having this meeting?

A. When I went in there that morning, somewhere around ten, ten-thirty—I was a little bit late getting in there—he was out there; and when I left he was still there.

1453 Q. How long did you stay?

A. I stayed there until the meeting was over, around noon. Then there was another meeting to be held that afternoon and when I went to work in the afternoon he was still around there. That night when I came in I was told he was still around. In fact, I heard his voice, but I never saw him when I walked by.

Q. Have you ever had any conversation with Inspector Edwards with regard to any of the union that were being formed or that were attempted to be formed among the employees of the Virginia Electric and Power Company along about that time?

A. Yes.

Q. What was it?

A. It was some time after that meeting, I believe, or after one of the meetings at the time officers had been elected to the C. I. O. or the Transport Workers Union, and I came in that night and Mr. Hopkins was out there and he saw me and said, "Have you seen Mr. Edwards?"

I said, "No; I have not."

He said he is around here telling us all that the C. I. O. is going to send him and Bishop and Gardner, another inspector, to the penitentiary. I didn't pay much attention to it any more. I rushed on home. I had been home probably an hour, and it was probably about 9:30 or 10 o'clock that Edwards came to my
1454 house in the company of Mr. Walker, a bus driver *driver* who brought him up there. I think he had had one or two bottles of beer. He wasn't what you would say was drunk, but he had it on his breath. He had been drinking a little. He came into my house and Mr. Pickler was present and I can't think of the names of all that was in there. There were about three couples in there altogether.

He came in there almost crying, or he appeared to be. He said, "Leroy, what is this about the C. I. O. going to send me to the penitentiary?"

I said, "What are you talking about, Mr. Edwards?"

He said, "Well, they tell me over at the Car Barns I have been sticking my neck out too far and the C. I. O. is going to send me to the penitentiary, and Mr. Bishop, and probably Duke Gardner."

I said, "Ed, there is nothing to it. Somebody is probably trying to scare you, or, if there is anything to it, I don't know nothing about it."

He kept insisting upon it a plenty.

1459 Cross-examination by Mr. GIBSON:

Q. When was the meeting at the New Virginia Cafe that you testified about; that is, the meeting you referred to a little while ago?

A. That is the C. I. O. meeting. I don't remember the dates very distinctly.

Q. Would you say that it was in June, 1937?

A. I think it was around that time. I am not positive about it.

Q. Can you make it a little more definite than that?

A. I don't remember the dates distinctly. I remember where I have been but I haven't the dates. I can't do it. I do know that at that meeting was the meeting where the officers for the C. I. O. were elected.

Q. Who were elected as officers?

A. I don't remember just who the officers were now.

Q. Who was elected president?

A. As President?

Q. Yes.

A. Mr. Elliott, I remember, was elected president.

Q. Who was elected vice president.

A. I don't remember who they were. I remember one other officer in there was Mr. Smith, who was recording secretary, and a Mr. Twiford as Treasurer. Who the others were I don't know.

1460 Q. What Smith was that?

A. J. M. Smith.

Q. How long before that had you signed the application for membership in the C. I. O.?

A. I signed up, I think, right around May 11th.

Q. When did you sign an application for membership in the Amalgamated?

A. Some time during December, 1937.

Q. You are still a member of the Amalgamated?

A. Yes.

Q. You are still a member of the C. I. O., or the Transport Workers Union?

A. I don't know whether I am or not. From what I understand, the local is not operating now.

Q. You never resigned?

A. I have not.

Q. You did stop paying dues?

A. I did.

Q. When did you do that?

A. I paid dues and the initiation fee and I never paid any other dues. They didn't pay any other dues: at least I didn't.

1467 Redirect examination by Mr. SPENCER:

Q. Mr. Atkins, do you hold any office in the Amalgamated?

A. I hold the president's office, as president.

Q. Of the local here?

A. Of the local division of the Amalgamated Association, local 1177.

Q. Were you elected to that office by the members of the Amalgamated?

A. I was.

Q. Of local—what number?

A. Local Division No. 1177 held an election, and I was elected to it.

Q. When were you elected?

A. I don't remember the date on that, the date of the meeting, but it was in January of February. I am not sure which it was.

Q. Of what year?

A. Of this year—1938.

1474 ROBERT E. ELLIOTT, JR., who had been previously sworn, was recalled to the stand and testified further as follows:

1481 Recross-examination by Mr. MOORE:

Q. You have testified that during the first two weeks of December you were employed by the Labor Journal here in Norfolk?

A. Yes.

Q. From December 1st to December 15th is approximately right, isn't it?

A. Approximately.

1482 Q. Were you engaged in any union activity in the month of November or was there a sort of gap there?

A. In the month of November?

Q. Yes.

A. No, sir.

Q. Was there any gap in your activities during the month of November or did your activities with the I. B. E. W. connect right up?

A. It was the Amalgamated.

Q. I mean the Amalgamated.

A. That is right.

Q. Did it connect right up with the C. I. O. combination?

A. It did not.

Q. How much of a gap was there?

1483 A. Approximately a month and a half.

Q. There was a gap of approximately a month and a half?

A. Yes.

Mr. SPENCER. I think the contract itself would speak.

Mr. MOORE. I will come to that.

By Mr. MOORE:

Q. Did you bring the contract?

A. Yes.

Q. Will you produce it and hand it to the Examiner?

A. Yes, sir.

Mr. MOORE. Then, Mr. Examiner, I will ask a question about it.

Trial Examiner FORT. I will state it does contain confidential matter in connection with the union in addition to the terms of the employment.

Mr. MOORE. What I want to ask him about is in respect of the terms of employment.

By Mr. MOORE:

Q. Will you just take the contract and from it read so much thereof that refers to the terms of your employment?

A. "For this work you are to receive 40 dollars a week."

Q. Now, wait a minute. Let us see what is the work. The work is a part of the employment.

Trial Examiner FORT. I don't see that the work, except that he is a representative of the union, bears. That is a confidential relationship between him and his employer.

Mr. MOORE. Let me state the point, may it please the

1484 Examiner. We think it would have a very great bearing upon the weight that might be given to the testimony of this witness if, for example, there was a provision contained in that contract which specially had reference to the Respondent. We submit that we are entitled to examine the witness on that point.

Trial Examiner FORT. As I understand it, the witness has testified that his duties were to organize the workers here in this area. Am I right in that understanding?

The WITNESS. That is right.

Trial Examiner FORT. And for this particular corporation. And the Respondent, as I understand it, is the only one operating in that capacity.

By Mr. MOORE:

Q. Does the contract say, "for this corporation"?

A. No, sir; it does not.

Trial Examiner FORT. His testimony was that he was to organize the workers of this type. As I understand it, the respondent is the only employer of that kind of help in this area.

Mr. MOORE. There are a number of other bus operators in this area.

Trial Examiner FORT. You might question him as to whether or not they would be covered by his duties. You can show the range of his activities.

1485 By Mr. MOORE:

Q. What was the scope of the work that you were employed to do? What were the boundaries of it?

A. To organize the eligible workers in this territory into the Amalgamated.

By Trial Examiner FORT:

Q. In what territory?

A. In the state of Virginia.

By Mr. MOORE:

Q. In the state of Virginia?

A. Yes.

Q. Does the contract say that?

A. Yes.

Q. Does the contract say?

A. No.

Q. What does it say on that point?

A. "In this territory."

Q. In what territory?

A. The territory in which I live, which is Norfolk.

Q. Does the contract relate, so far as the scope of the work is concerned, to any organization work other than such as would be among employees of the Virginia Electric and Power Company? That is all I am trying to find out as a technical matter.

A. It does not specify any workers outside of the Virginia Electric and Power Company nor inside of the Virginia Electric Power Company.

Q. What is the scope of it as it is defined in the contract?

1486 A. Within this territory where I live.

Q. Is it expressed as "in the territory in which you live"?

A. No; it is not.

Q. How is it expressed?

A. Is it necessary to answer that question?

Trial Examiner FORT. As a matter of fact, I will say for the record that the letter itself is very incomplete in showing specifically what his duties are. It has to do largely with the amount of compensation he is to receive, and the beginning of it, and the period. Then there are some other references in there to the charter of the organization and how that is obtained, and things of that sort.

Mr. MOORE. I cannot imagine a contract of employment that would not definitely state what the employment is that is to performed.

The WITNESS. As a special organizer for the Amalgamated, an organizer is subject to call by the International Office and subject to be sent to any place. This contract is a verification of an oral arrangement or agreement between John Cookman, of Washington, D. C., and myself. John Cookman left Norfolk and went back to Washington and made a report to the International office. And all the report John Cookman made the international office sent me this letter, which is in the form of a contract.

By Mr. MOORE:

Q. It is a confirmation of a verbal agreement?

1487 A. Yes.

Q. Suppose you just go ahead and read from all of it that relates to your employment, as to the terms of your employment?

A. I cannot see the materiality of anything in that contract other than the time he started to work, the nature of his employment, whether it was temporary or whether he was a special organizer, and the amount of money he got.

Trial Examiner FORT. I think that is so.

Mr. SPENCER. I think anything else is entirely material.

Trial Examiner FORT. I think that is so. I do not see what bearing the other would have in the record.

Mr. MOORE. As a matter of fact, Mr. Examiner, we think the whole contract is very material and relevant, for this very purpose. I am limiting it now expressly so as to call for an answer along the lines the Examiner indicated.

Mr. SPENCER. I think any part of it that has to do with the amount he was to receive and the dates of his employment.

Trial Examiner FORT. Any part that of it that has to do with the amount he was to receive in the dates of his employment, when it commenced and when it changes, if at all, and whether it might show whether it would be temporary or permanent. I think that would be material.

Mr. MOORE. I think the periods as defined in the contract are very material as affecting whatever weight might be given
1488 to this man's evidence. Suppose the contract said he would be paid a second consideration in a certain way, if at the end of a certain service he performed a certain duty that was contracted for; don't you think that would be very material in affecting the weight of the testimony he might give?

Trial Examiner FORT. It would depend entirely upon the service and the character of the work.

Mr. MOORE. And also what the inducement was, wouldn't it?

Trial Examiner FORT. Do you mean his testimony as the present hearing?

Mr. MOORE. Yes; as to this hearing. It relates directly to the credibility of this man's testimony, ever since he has testified.

Mr. SPENCER. All I know the witness has testified to with regard to this contract was the amount of money that he was to receive per week and the time that the contract started. As I recall it, that is the only thing he has testified to in regard to this contract.

Mr. MOORE. But you overlooked the fact, Mr. Spencer, you have amended your complaint and tried to lay the basis here for further proceedings in an effort to try to get this man reinstated. Now, in connection with that I have the right, I respectfully submit, to inquire fully into his contractual relations under which he is now employed. And I do not have to take his word for it when he has a written paper.

1489 Trial Examiner FORT. I think the scope of the employment comes within the Board's rules against requiring revelation of any union secrets. The testifying party or union is to take whatever responsibility may go with that.

After reading the letter I do hold that it comes within that exception, that is, that the Board will not require the revelation of secrets as to union membership. But in refusing to reveal them the complaining witness or the union, or whoever might be involved, will take whatever responsibility may flow from failure to do so.

I do hold that it is relevant for you to question, and pertinent and permissible for you to question him as to the amount he was to receive, the duration of the contract, and the general duties, that is, whether he was an organizer—local, state, or national.

1490 By Mr. MOORE:

Q. Will you read from the contract everything in it that pertains to the Examiner's statement?

Mr. MOORE. And may I ask that the Examiner's statement be read back to him?

(The reporter thereupon read the statement referred to.)

Trial Examiner FORT. That does not mean any special admission, that he might make, or a description of those general duties, because, after having read it, I can see that it does have information which the union doubtless would not wish to disclose, and I do not think it would be a proper subject of inquiry, insofar as the required production of it is concerned, but the failure of the witness to reveal it will have whatever weight may be given in the final summing up of the evidence.

By Mr. MOORE:

Q. Now, Mr. Elliott, you heard the Examiner's ruling. Will you read from the contract everything that pertains to the matters that the Examiner ruled you should answer?

A. "For this work"——

I will read first the first thing that he ruled I should read or that I should testify to:

"For this work, you are to receive $40 per week, plus expenses."

"I am in receipt of a letter from John H. Cookman,
1491 advising me of your desire to help out in organizing the men of Norfolk, Virginia, and that surrounding territory."

"Reports should come to this office weekly for the work you are doing, explaining fully where you have been and what you have done, etc."

That is all that comes under that category.

Q. I notice that you had written a letter applying for this position.

A. I do not see where you can surmise that.

Q. Read the first sentence that you read.

A. "I am in receipt of a letter from John H. Cookman, advising me of your desire to help out in organizing the men of Norfolk, Virginia, and that surrounding territory."

Q. I misunderstood it. It is a letter from Mr. Cookman, indicating you had expressed to Mr. Cookman a desire. That is right, is it not?

A. That is right.

Q. Now, what is the date of that agreement——

A. December—this letter was dated December 21, 1937.

Q. You have not read the portion of it as to the date that your employment would begin.

Mr. Moore. May it please the Examiner, we wish whatever the witness says to go into the record on this. We would like whatever he says to go into the record.

Trial Examiner Fort. I will be glad to have him take
1492 down anything he says.

Mr. Moore. Yes, sir. I just want you to talk out loud enough so the stenographer can hear it. If you whisper to the Examiner, he cannot do that (addressing the witness).

Trial Examiner Fort: This sentence here, read it from there (indicating on document), the sentence before the one you just started to read.

The Witness: Well, Mr. Examiner, may I ask you to read this letter in reply (handing a document to the Trial Examiner)?

Trial Examiner Fort: Yes.

Mr. Moore: I do not think the question has been answered.

Trial Examiner Fort. I suggest reading an additional part, in view of the other letter. I think it would be covered by the ruling I made as to his right to withhold any secrets of the organization; I mean his right to refuse to divulge them, and take whatever responsibility may be involved in his refusal.

Mr. Moore: Will you read the question I asked him?

(The reporter thereupon read the pending question as follows:)

"Q. You have not read the portion of it as to the date that your employment would begin."

1493 By Mr. Moore:

Q. Now, you refuse to answer that question as to when your employment would begin?

A. I will make a statement orally, based on this letter, as to when my employment begins.

Q. I ask you the question: Does the letter specify when your employment shall begin? and if so, read from the letter.

A. It specifies when my employment shall begin.

Q. Read it, please, sir, into the record.

A. It is so worded that I cannot read it without stating something that I think is a confidential agreement between the international office and myself.

Q. So you decline to answer?

A. I have not yet; no, sir.

Trial Examiner Fort: I will state for the record, after reading it myself, that there was a $35 preliminary fee that he may have received in the year 1937, and the regular salary of $40 a week—is it?

The Witness: That is right.

Trial Examiner Fort: To commence on January 1, 1938?

Mr. Moore: Well, sir, we do not think it is permissible for the Examiner, with all due respect, sir——

Trial Examiner FORT: I understand.

Mr. MOORE: To look on the letter and make a statement for the record when counsel are not permitted to see it.

Trial Examiner FORT: There was no looking. In fact,
1494 he voluntarily showed it to me, to give me the full benefit of all the documents.

1495 Mr. MOORE. I suggest it in a perfectly proper sense.

Trial Examiner FORT. I understand; but I want the record to show that it was voluntarily exhibited to me, so that I should have the full benefit of everything it contains.

The WITNESS. I think, Mr. Moore, that the whole reason of my bringing this contract down was voluntary. In other words, I was requested to do so, with the agreement that counsel for neither side would ask to see the letter or to know what was in the letter, other than how much money I was receiving, and that was the thought I had in mind when I brought the letter down to the hearing.

By Mr. MOORE:

Q. Well, sir, you knew that you were going to be questioned about the letter, so far as the Examiner would permit you to be questioned.

A. Oh, I would have been surprised if you had not.

Q. My question was whether or not the letter specifies the dates on which your employment shall begin, and if so, read from the letter what it says on that point.

A. I have answered that question.

Trial Examiner FORT. I think he has answered that question, by declining.

By Mr. MOORE:

Q. All right, sir. What does it say as to the length of your employment?

A. It makes no statement as to the length of my employment.

Q. Is there any statement in there indicating whether
1496 your employment is temporary, and if so, read that into the record?

A. There is no statement in the letter that I have from the international office as to whether my appointment is temporary or permanent.

Q. Regardless of when you may have begun your duties, were you, in fact, working on January 1, 1938, under that agreement?

A. That is right.

Q. And you have been working under that agreement ever since to the present time?

A. I have.

1522 THOMAS H. LATHAM, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. HILTON:

1523 Q. State your full name for the record, please.

A. Thomas H. Latham.

Q. Where do you live, Mr. Latham?

A. At the present time, 200 28th Street, Virginia Beach.

Q. What is you occupation?

A. Representative for the International Brotherhood of Electrical Workers.

Q. What kind of an organization is that?

A. It is an organization claiming jurisdiction over the entire electrical industry.

Q. And is it affiliated with any international organization?

A. Any international organization?

Q. That is right.

A. We are an international organization.

Q. Well, are you affiliated with any other labor body?

A. We are affiliated with the American Federation of Labor.

Q. Do you have a constitution and by-laws?

A. We do.

Q. Can you tell us who are eligible for membership in your organization?

A. Anyone in the electrical industry.

Q. Do you take foremen into the organization?

A. We do.

Q. Would any office workers or electrical workers be

1524 eligible for membership in your organization?

A. Under certain conditions, yes.

Q. Do you have any locals in the international?

A. Any locals?

Q. Yes; that is right.

A. Oh, about 800.

Q. Do you have a local at Norfolk, Virginia?

A. That is right.

Q. Was any charter issued to any local in Norfolk?

A. There was.

Q. Do you recall when that charter was issued?

A. That charter was installed, to the best of my recollection—I can give it to you definitely from the notes that I have—the charter was installed on August 4, 1927. The local's number was B-980.

1525 Q. Do you have any members in this local who are employees of the Virginia Electric & Power Company?

A. All members of that local are employed by the V. E. & P. Co.
Q. Does the local have officers?
A. Yes, sir.
Q. Do you know who those officers are?
A. Do you mean to name them?
Q. That is right.
A. Yes.
Q. Name them, please.
A. C. W. Creekmore, president; W. O. Morrison, vice president; J. L. Judge, financial secretary and treasurer; H. D. White, recording secretary.

1530 JESSIE M. SMITH, a witness called previously by the Board, resumed the stand and testified further as follows:

Direct examination by Mr. HILTON:

1531 Q. Where do you live, Mrs. Smith?
A. 1424 Decatur Street.
Q. Is that Norfolk, Virginia?
A. South Norfolk, Virginia.
Q. Were you ever connected with the Transport Workers Union of America?
A. I was.
Q. When were you connected with that organization?
A. Around the middle or latter part of May 1937.
Q. And what was your connection with that organization?
A. I was recording secretary.
Q. Now, is the Transport Workers Union of America affiliated with any other labor organization?
A. It is affiliated with the C. I. O.
Q. And was there a local of the Transport Workers in Norfolk?
A. Yes, sir.
Q. Did that local have a charter?
A. Yes, sir.
Q. When was that charter issued?
A. It is dated the 4th day of August 1937.
Q. You are reading from a document now. Is that the charter that was issued?
A. This is the charter; yes, sir.

Q. Now, who are eligible for membership in the Trans-
1532 port Workers Union?

A. Employees of any transportation company; anyone that does not have the privilege of hiring and firing.
Q. How about office and clerical workers? Did you take them into your organization?

A. Yes, sir.

Q. Did your local in Norfolk have any meetings?

A. Yes, sir.

Q. Did you have any members who were employees of the Virginia Electric & Power Company?

A. All of the members were.

Q. And did the members who attended these meetings have the right to vote upon the various business that was transacted by the local?

A. Yes, sir.

Q. Now, did you have any officers for the local?

A. Yes, sir.

Q. Could you tell us who the officers were?

A. The officers or the names?

Q. The names of the officers.

A. We had Mr. Elliott—R. E. Elliott, Jr., he was president of the local; Mr. W. E. Twiford was the treasurer of the local; I was recording secretary of the local. I do not recall who the others were.

Q. Now, these men that you have just named, were they 1533 elected or appointed to the offices that they held?

A. They were elected by the membership in the local.

Q. And did the members of your organization have the right to vote upon who would be the officers?

A. Yes, sir.

Q. What was the object or purpose of having a labor organization of the Transport Workers Union at Norfolk?

A. To get better working conditions, get more wages, form a closer relationship between the employees and the employer.

Q. Is your organization still active in Norfolk?

A. No, sir.

Q. Was the the charter ever surrendered?

A. No, sir.

Q. What, if anything, happened to the local of the Transport Workers in Norfolk?

A. The membership just dropped off until they did not have enough members to carry on business.

Q. And when did your membership start dropping off?

A. After the contract was signed with the I. O. E.

Q. And that was the date fixed as August 5, 1937?

A. August 5th; yes, sir.

Q. About how many meetings did the local have after August 5, 1937?

A. I could not say exactly, because I do not remember. We had several meetings. I do not remember how many.

1534 Q. Do you know when it was that you held your last meeting, Mr. Smith?

A. Do I know where it was?

Q. Do you know when it was?

A. No, sir.

Q. Can you tell us when the local of the Transport Workers Union in Norfolk ceased to exist as a local, let us say?

A. I can't give the exact date, but it was sometime in the latter part of August or the first of September.

Q. Of 1937?

A. Yes, sir.

Q. And I believe you stated you have no organization in Norfolk now?

A. No, sir.

1540 *Stipulation*

Mr. HILTON. Mr. Examiner, at this time I would like to offer in evidence as Board's exhibit No. 36 the constitution and bylaws of the Independent Organization of Employees of the Virginia Electric & Power Company.

I have talked to Mr. White, and I think we can stipulate
1541 that the copy I wish to offer in evidence is a true and correct copy of the constitution and bylaws.

Mr. WHITE. As adopted June 15th.

Mr. HILTON. As adopted June 15, 1937.

Trial Examiner FORT. Is there any objection?

Mr. WHITE. We are agreeing, of course, to have this constitution and by-laws go in. But I might say that while the constitution is the same now, there have been some amendments to the bylaws since originally adopted.

Trial Examiner FORT. You will be given an opportunity to show that later.

The exhibit is accepted.

(The document above referred to was received in evidence and marked "Board's exhibit No. 36.")

1544 Mr. GIBSON. Mr. Examiner, as this is a stipulating time, I am going to offer one, which has likewise been signed by counsel for the Board and counsel for the respondent. It presents certain press reports that we deem relevant.

Examiner FORT. Is there any objection?

Mr. HILTON. No objection. I have signed it. I signed it at the same time.

Trial Examiner FORT. It will be received in evidence as an exhibit.

(The document referred to was marked "Respondent's Exhibit No. 11" and was received in evidence.)

Trial Examiner FORT. Are there any outstanding objections to the admission of the documents which have been offered for identification? If not, they will all be admitted en banc at this time.

Mr. HILTON. Mr. Examiner, I recall that there are certain copies of minutes of meetings that have not been received in evidence, but which have been marked for identification. Unfortunately, I was out at the time that they were presented, and I do not have an accurate list of them. The only way I could do that would be to check the record tonight and make a list of those. I do not think there are very many of them.

Mr. WHITE. As I recall it, they are the minutes of certain meetings of the I. O. E. that were introduced, and
1545 photostatic copies of the originals we let the Board have for that purpose. I have no objection to receiving them. I examined them when they were put in, and I have no objection to receiving them.

Trial Examiner FORT. Do you want me to withhold ruling on their admission at this time?

Mr. HILTON. Well, with Mr. White's consent, I think they could go in.

Trial Examiner FORT. I assume that you have no objection to the admission of any of these exhibits.

Mr. WHITE. That is right.

Trial Examiner FORT. Any objections which have been made to the receipt of the exhibits which have been marked for identification only will at this time be withdrawn.

Mr. GIBSON. That includes specifically Respondent's Exhibits 1, 2, 6, and 7?

Trial Examiner FORT. Any to which there is no objection at this time will be admitted.

Mr. GIBSON. Is there any objection at this time to any of those four exhibits?

Mr. HILTON. I do not recall exactly what they are.

Mr. GIBSON. I have copies here, and the originals are right there.

Mr. HILTON. I have no objection.

Trial Examiner FORT. They are all admitted and made a
1546 part of the record.

Mr. GIBSON. Thank you, sir.

(All exhibits heretofore offered by both the Board and the respondent, and marked for identification only, were thereupon received in evidence; each of the said exhibits bear the number with which they were marked for identification only.)

1555 MONTELLE C. SMITH, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MOORE:

Q. Will you please state your name?

A. Montelle C. Smith.

Q. And will you state what your position is with the Virginia Electric and Power Company?

A. I am Executive Vice President of the Virginia Electric and Power Company.

Q. You have been connected with the company for how long?

A. Since July 1936.

1556 Q. Mr. Smith, you stated you became connected with the Virginia Electric and Power Company as Vice President in July 1936. What is the extent of your jurisdiction and duties in that position?

A. General supervision of the operations of the company in all departments.

Q. Are you familiar with the background for the bulletin which has been filed in evidence in this case as Board's Exhibit No. 3, dated April 26, 1937?

A. I am.

Q. If so, just state briefly what you knew about that matter?

A. I was familiar with it. Prior to and during the time when this bulletin was put out the newspapers were filed every day with stories of labor and labor activities; there were difficulties in a great many of them out in the middle west. Just prior to the

1557 date of the issuance of this bulletin the Supreme Court had upheld the constitutionality of the Wagner Labor Relations Act. That stimulated still more the newspaper publicity, apparently. A great deal of this publicity was of such a character as to appear to suggest that it was necessary for an employed man to become a member or to be a member of some labor organization.

There were a great many discussions among the executives of the company on the general conditions that existed, and eventually it was decided that the proper thing to do was to put out a bulletin which would state the company's position with respect to the labor situation and give to the company's employees such information as the company's officials had relative to their status.

Q. Up until the time of that bulletin or very shortly prior thereto, and after the date when you became Vice President of the Virginia Electric and Power Company in July 1936, had there been any discussions of unrest in the way of labor activities in the company at all?

A. As I recall it, immediately prior or just a few days prior to the issuance of this bulletin there had been, I think, one suggestion only, coming from a small group here at Norfolk that they desired an increase in pay. Other than that I think I have heard nothing at all of that character.

Q. Were you one of the persons in that discussion and conference with respect to the preparation of that program on
1558 April 26th?

A. I was.

Q. Q. Did that bulletin have any other purpose than merely to state the position of the company and give the men the information contained therein?

A. That was the sole purpose of it.

Q. Following that bulletin, Mr. Smith, and between the date of that bulletin on April 26th and May 20th are you familiar with any requests that came to the attention of the officers of the company with respect to wage adjustments or changes in working conditions?

A. During that time there was a petition that came up from the Norfolk Transportation Section carrying a large number of names—I believe there were 190 names—and there were some verbal requests from the Transportation Department in Richmond relative to improvement of facilities only, as I recall it, and there was also a verbal request from the line department in Richmond which covered some improvement in facilities and an increase in wages.

Q. Mr. Smith, I hand you two papers, one of which has been filed in evidence as Board's Exhibit No. 12 A which is marked "A petition," and so on, signed by what has been described as 190 names. Is that one of the two petitions that came to your attention and that of the other officers of the company during this interval?

1559 A. This is the petition from the Norfolk Transportation Department.

Q. You identify that as the original of the paper?

A. I do.

Q. I now hand you a paper, a copy of which has been filed as Board's Exhibit No. 11 A and 11-B, and I will ask you whether or not you identify this paper that I now hand you as the original of a request that came up from the Norfolk shops during this interval between April 26th and May 20, 1937?

A. My recollection is that that came in ahead of April 26th. I recall its coming in but I am not positive as to the date.

Q. But you do identify that as the original of the request that came up from the Norfolk shops?

A. Yes, sir.

Mr. Moore. We would like to file this as Respondent's Exhibit No. 12.

Trial Examiner Fort. It will be received in evidence as Respondent's Exhibit No. 12.

1560 (The document above referred to was received in evidence and marked "Respondent's Exhibit No. 12.")

Mr. Moore. We would like to have the record show that this is just a counterpart of Board's Exhibit No. 11-A and 11-B.

By Mr. Moore:

Q. Mr. Smith, you do not recall at the moment whether that was received just before the bulletin or just shortly after the bulletin, do you?

A. My recollection is that it was before. But I am not positive as to that.

Q. Were these other requests that came to the attention of the officers for adjustments in their wages or working conditions during this interval between April 26th and May 20th in writing or were they all verbal?

A. My understanding is that they were all verbal. I saw no written request.

Q. These two were the only written requests?

A. Yes.

Q. The other three, as you recall it, were verbal?

A. That is correct.

Q. As a result of these several requests that came to the attention of the officers of the company from these several groups of employees during the interval to which you referred, what was done on or about May 20th, if anything?

A. On or about May 20th the superintendents and man-
1561 agers, and the top officials of all the properties that the company operate were called to Richmond for a discussion of the general situation which these requests seemed to indicate existed.

Q. Was that the meeting at the John Marshall Hotel or the conference there?

A. Yes. That meeting was at the John Marshall Hotel.

Q. Is it an unusual thing for such a conference to be called?

A. Company wide conferences are not very frequent because not very many things come up that are company-wide in their application. Conferences are very, very frequent, and company-wide conferences are not at all unknown.

Q. They *they* are held from time to time?

A. They are.

Q. On matters of general interest with the company?

A. Any matter of general company-wide interest would be the cause of a company-wide conference.

Q. When that conference was beg in was there any well-defined plan which had been determined upon in advance of the conference

as to what should be done in respect of these several requests from employees?

A. There was no well-defined plan.

1562 Q. Now, will you just briefly state what was the result of this conference in connection with these requests?

A. The executives described for the benefit of those officials in attendance the developments that had occurred up to that time, the receipt of these requests, et cetera, and advanced the thought for discussion that there apparently was the desire on the part of the employees to have some different sort of conditions from those that then existed. We felt that there was a good deal of doubt among the employees as to what the employees' rights were, et cetera, and suggested also for discussion the thought that we might be able to arrange a meeting, at which the general status would be dealt with.

Q. Was there any decision reached in that conference as to the date for holding the subsequent meeting for discussion purposes with employees on that subject?

A. After a considerable amount of discussion it was decided that the executives present would go back to their individual properties, request the various groups of employes on their properties to select a few—I do not think there was any fixed number suggested—men among their group who would, if they desired to do so, meet with the president of the company on the 24th, four days later, and hear from him a discussion as to what their rights and status were.

1563 Q. Was the decision which was reached in that conference, May 20th, with respect to suggesting or inviting the employees to come and attend a meeting to be addressed by some official or officials of the company some three or four days later based upon the idea that there was to be any order that such employees did come to such a meeting?

A. None whatever. They were to be invited to do so if they cared to do so.

Q. Did the suggestion contemplate that any specific number of employees should come?

A. It did not.

Q. Was there any discussion in regard to such meeting to be held three or four days later, about such meeting being more or less in substitution for a mass meeting of employees?

A. As I recall it, Mr. Holtzclaw, in addressing the group, said that he would, if he could, prefer to address the employees as a whole; but there were just so many of them, and they are so widely scattered, a good many of them having to work all the time, of

course, that it just did not seem feasible to get the entire employee group together.

Q. Was there any effort to be made to suggest or in any way influence what employees should come to the meeting?

A. None whatever. As a matter of fact, there was stress laid on the idea that the executives and foremen should be very careful to refrain from even suggesting or attempting to influence any selection.

1564 Q. Well, did the suggestion that some of the employees be invited to attend such a meeting include the idea that the employees attending would have authority to do anything as representatives of anybody else?

A. The only thing that the management sought to do was to get word to the employees that some executive or executives of the company would talk to anyone they wanted to send there to the meeting about the status of employees under the Labor Act. There was no insistence whatever that anybody come; they were free to come, if they wished; free to send somebody, if they wished; and equally free not to send anyone, if they did not wish.

Q. Was it suggested that those who did choose to come would have any authority to act as representatives of others to do anything?

A. It was not. It was merely a means—taken as a means of getting back to the entire employees' organization a talk by the executives, which could not very easily, because of circumstances, be made to the entire organization direct.

Q. As I understand, it was a sort of a substitute of what the President sees fit to call a "Fireside Chat"; was it not?

A. Except that it was at lunch.

Q. Yes. I mean that the 24th meeting was to be in substitution for a sort of "Fireside Chat."

A. That is correct.

1565 Q. Now, did you hear the evidence that has been introduced here with respect to the number of such representatives, as they were called, or persons in the distribution department in Norfolk, who attended the meeting held in Norfolk on May 24th?

A. I think I heard all of it.

Q. If there was at the meeting which was held over the garage here in Norfolk any suggestion from anybody in the management end of the company that there should be one, two, three, or any specified number of persons to go to such meeting on May 24th or 25th, did that suggestion originate from any officer of the

company, or was it with any authority from any officer of the company?

A. It did not.

Q. Now, do you recall the particular date it was decided on for holding this discussion meeting in Richmond and the time for the discussion meeting in Norfolk?

A. The initial plan was to hold the meeting in Richmond on the evening of May 24th and to hold the meeting in Norfolk on the evening of May 25th.

1566 Q. Now, did you attend the Richmond meeting?

A. I did not.

Q. Did you attend the Norfolk meeting?

A. I did.

Q. Was the Norfolk meeting held on the evening of May 25th?

A. No; the date was shifted ahead, the same as Richmond, on May 24th.

Q. Why was that done?

A. Further discussion among the executives there in the Richmond office produced the thought that if the meeting were held in Richmond on the 24th and was not held in Norfolk at the same time, but was held instead 24 hours later, there was likelihood that all sorts of rumors as to what had occurred in Richmond might spread throughout the rest of the company, and it was sort of desirable to avoid the possibility of that; also the Richmond and Norfolk districts are substantially the same in employees and it was thought desirable to get the word out to the maximum number possible simultaneously.

Q. In other words, it was merely to avoid some confusion about what had occurred?

A. That is correct.

Q. Did you and Mr. Norman Jones come down for that meeting and first confer with Mr. Throckmorton in regard to having him attend the meeting?

1567 A. The Norfolk meeting?

Q. Yes.

A. We did.

Q. Did you have with you a copy of the statement that Mr. Holtzclaw had prepared to read at the Richmond meeting?

A. We did.

Q. After some discussion between you, Mr. Jones, and Mr. Throckmorton, did you three attend that meeting?

A. Did we do what?

Q. Did you attend the meeting on the evening of May 24th here?

A. We did.

Q. Will you just briefly state what occurred at that meeting?

A. Mr. Throckmorton opened the meeting by saying that the men had been invited to come there to hear a speech, which had been reduced to writing, by the president of the company. He then proceeded to read the speech. He volunteered, after the speech had been read, to answer any questions that those present might wish to ask. A good many questions were asked. Nearly all of them were intended, apparently, to get some expression of opinion from the executives present as to what the men could or should do. Most of them we were unable to answer, because we told them frankly that we could not tell them anything
1562 about what they should do. We had told them what, under the Wagner Act, they were entitled to do, and had explained the company's position, and that was just about all that we could tell them.

Q. Did you make it clear to them that you were not in a position to advise them one way or the other as to what they should do?

A. We t[illegible]ed to make it very clear.

Q. I call your attention to a paper which has been filed in this proceeding as Board's Exhibit No. 4, and ask you whether or not that is a counterpart of a speech or statement that Mr. Throckmorton read at the Norfolk meeting, and to which you have just referred (handing the exhibit to the witness). Do you identify it?

A. That is the speech.

Q. Now, so far as the management end of the company was concerned, there were present yourself, Mr. Throckmorton, Mr. Jones—and was Mr. Miller there?

A. Mr. Miller; yes, sir.

Q. Your counsel was there?

A. Yes, sir.

Q. Was anyone else present representing the management at that meeting?

A. No one representing the management. So far I as know, no one in any supervisory capacity, other than those you mentioned, attended that meeting

1563 Q. In extending the invitation to employees to meet with representatives of the management at both these meetings, was it made clear that it was preferred that no one in a supervisory position should attend the meeting?

A. I think it was more than that. It was made clear that we would prefer not to have anyone from the supervisory forces.

Q. So far as you know and believe, was there anybody in the Norfolk meeting that you attended who was in a supervisory position, except you and the other three gentlemen whom you have just named?

A. There was not.

Q. Approximately, how many persons did attend the Norfolk meeting?

A. I kept no exact count. I think about 70.

Q. Does that number indicate to you whether or not the employees had felt quite free to send as many from the various departments as they saw fit?

A. Yes; I think it would.

Q. What does it indicate?

A. I say I think it would.

Q. It would indicate what?

A. That they did feel free to send as many as they wished. That would be in the ratio of, I think, one man to rather less than 20 of the employees.

1570 Q. Now, after this statement was read, do you recall any specific questions that were asked by employees who were present at that meeting?

A. Well, there were many questions asked. I do not recall many of them specifically. I know one question was asked by a lady in the meeting, whether she had to join anything or not. That one, of course, we answered by saying that she did not have to join anything, if she did not want to. Most of the questions were questions seeking advice as to what to do or whether to do anything or not.

1571 Q. And what was the answer that was given to all such questions as that?

A. To all such questions as that the answer was that we could not suggest that they should or should not do anything and would not advise them.

Q. Were any questions asked substantially to this effect, as to what the company wished the employees to do?

A. There was.

Q. How was that question answered?

A. The answer that we gave there was that the company expressed no preference whatever. The employees were wholly free to do whatever they might wish.

Q. Now, did the meeting break up before you and Mr. Throckmorton, Mr. Miller, and Mr. Jones left, or did you retire and leave the employees still discussing the matter?

A. We retired before the meeting had—we told them that we were going to retire, and if they desired to remain there for further talk of what had been read and said they were privileged to do so.

Q. Did you then leave entirely and have no further connection with the matter that evening?

A. We left the meeting.

Q. You did leave and went on back to Richmond, as I understand?

A. We did.

1572 Q. The meeting was held at what time of the day?

A. I think the meeting was scheduled for 8 o'clock in the evening. I am not sure that that was the exact time.

Q. Now, was any effort made by you or any officer in the company or any person in the management of the company, so far as you know and believe, to ascertain what did occur at the meeting after you left, or did you ever have any report of any kind made to you in regard to what did occur?

A. We made no effort to ascertain, and I never had any report. I do not think any report was ever made.

Q. Now, on the next day, May 25th, were there any meetings held among persons employed by the company in respect to this matter?

A. There were two meetings, one in Richmond and one in Norfolk.

Mr. HILTON. Excuse me. Is that the next day?

Mr. MOORE. The next day, May 25th.

The WITNESS. These were meetings between the executives of the company and the top officials below the executives.

By Mr. MOORE:

Q. Department heads?

A. Department heads.

Q. And subdepartment heads?

A. In Richmond and later on in Norfolk.

Q. Now, just what occurred, please, at this Richmond meeting that next morning?

1573 A. At that meeting we started out by describing the meeting that had occurred the night before, what had been said and what had been done, and proceeded from that to caution those department heads to spread the word along throughout their organization that all supervisory people must be very, very careful not to seek to influence the thinking or action of any of the men in their departments.

Q. Was it explained to these department heads and subheads that the men were to be absolutely free to do whatever they wanted to do, if anything?

A. It was very strongly stressed that that is what they were to do.

Q. Approximately how many persons were there in this morning meeting on the 25th at which this was explained?

A. I kept no record of that number, but I imagine 18; 15 or 18, perhaps.

Q. Did you ever have any reason to believe that those instructions were not carried out?

A. I did not.

1574 Q. Did this group that did attend the Richmond meeting that morning include substantially all department heads and the main assistants to the department heads?

1575 A. I think all of the department heads and their first assistants were present.

Q. Now, did you attend a further meeting that day of department heads?

A. We had the same sort of meeting here in Norfolk.

Q. Do you remember about what time that occurred?

A. It was on the afternoon. I am not sure as to what the hour was. I think rather late in the afternoon before we started, perhaps 4 or 4:30.

Q. About how many did you have at the Norfolk meeting?

A. About the same number, 15 or 18.

Q. And you did very much the same thing, that is, explain to them what had been done the previous day and make clear that they were not to try in any way to influence anybody as to what should be done?

A. We tried to do exactly the same thing.

Q. Now, until the complaint was filed against the company had you ever up to that time had any reason to believe that anybody in the Norfolk division had not carried out those instructions, if they had not?

A. I had not.

Q. At any time after the May 24th meeting was there ever any effort made, with your authority or anyone under you in an executive position with your knowledge or authority, seeking to ascertain what was going on among the men, or employ-

1576 ees of the company in respect to the formation of any labor organization?

A. There was none made by me, and, to the best of my knowledge, none made by anyone else.

Q. Was it a deliberate purpose on your part that there should be no such checking up?

A. It was.

Q. And was that explained?

A. It was, very definitely.

Q. I meant the department heads and their assistants in both of these meetings.

A. That is correct.

Q. Well, now, from May 24th up until, say, the middle of June, did you have any knowledge whatever as to what was going

on among the employees in respect of the formation of any union or unions?

A. I did not.

Q. So far as you are concerned, was there any activity of any consequence going on? Did you have any knowledge at all on the subject?

A. I had no knowledge of any kind. There were, of course, newspaper articles, and there were occasional rumors going around, but there were not any that were the same two days in succession, and we had no knowledge of what was going on, if anything.

1577 Q. In fact, up until the letter of July 19, 1937, from Mr. Underwood, as chairman of the I. O. E. general com-
1578 mittee, was received, in which a proposed agreement was submitted on behalf of the I. O. E., which has been filed in evidence, did you have any knowledge at all as to what was going on or have any reason to know?

A. That letter of a proposed agreement was my first direct knowledge of anything that had happened.

Q. Well, how, as a result of that letter will you state whether or not an engagement or appointment was made with the I. O. E. general committee for the discussion of their proposal?

A. There was one made.

Q. That was made for what date?

A. For July 30th.

Q. Now, you heard Mr. Holtzclaw's testimony, I believe, did you not?

A. I did.

Q. And in his testimony you recall that he stated that after a brief discussion on his part at the opening of that conference on July 30th, he appointed several officials for the company as a bargaining committee on behalf of the company and that you were made chairman.

A. I did.

Q. On behalf of the management.

A. Yes.

1579 Q. Now, will you just briefly review the negotiations that were suggested in that matter? You acted as chairman in behalf of the management, and who was acting principally on behalf of the I. O. E. committee?

A. Mr. Eugene Underwood was at the head of the I. O. E. committee, as I understood it, the entire personnel of both of the—that is, the committee for the—negotiating committee for the company and the negotiating committee for the employees remained together as a unit for discussion of the general clauses

that were in the proposed agreement as submitted by the I. O. E.

1582 Q. Mr. Smith, just by way of summary of the summary, I will put it, will you please state at this time what were the high points of the negotiations?

The WITNESS. The first serious clause that we encountered was the clause in the proposed agreement providing for a closed shop. The company was very firm in its position that it could not grant such a request and the representatives of the I. O. E.

1583 were equally firm in their demand for it.

The discussion on that point lasted for something like two hours, at which time we broke up for lunch.

Q. That was the first day, July 30th?

A. Yes, sir. That was July 30th.

Q. Let me ask you this question right there. Prior to the receipt of the proposal of July 19th from the I. O. E. had there been any thought or discussion by anybody in the management of the company, so far as you know, about the company's ever agreeing to a closed shop among the employees?

A. Not so far as I know. I certainly had not participated in any.

Q. Proceed please.

A. When we returned after lunch I suggested that since we did not seem to be making any progress with respect to that particular clause it might be well to drop that for the time being and see how closely we might be in agreement on other clauses. And that was agreed to.

We finished the general clauses proposed in the agreement fairly quickly and then we split up into subcommittees.

1584 Q. When we adjourned a few minutes ago, Mr. Smith, we did so so that we could locate the original of the proposed agreement submitted with Underwood's letter of July 19, 1937, which is Board's Exhibit No. 8. I now hand you a document which appears to be that paper, and I will ask you whether you identify that as the original agreement submitted with Mr. Underwood's letter on behalf of the I. O. E. on July 19th, 1937?

A. That is the agreement.

1585 Trial Examiner FORT. It will be received in evidence as Board's Exhibit No. 8.

(The document above referred to was received in evidence and marked "Board's Exhibit No. 8.")

By Mr. MOORE:

Q. Referring now to the paper which you have in your hand, Mr. Smith which is the original proposal, will

1586 you now state briefly how the negotiations proceeded with reference to the topics as they are set out in that paper?

A. Do you mean take up each individual topic by itself?

Q. No; but just refer first to the general subject.

A. Negotiation on the general clauses was carried on by the entire personnel of both the company's committee and the I. O. E. committee.

Q. What is the first subject that is there referred to in that proposal?

A. The first numerical subject is the closed shop. It was the negotiation of that particular clause that I had talked about just before we recessed.

Q. Were the subjects discussed in the negotiations in the order in which they appear in that proposed agreement?

A. They were, in that sequence.

Q. Section E, before you get to the general provisions, you will notice is entitled "Recognition." Do you recall whether or not before the meeting was begun anything was done by the management with a view to checking up the regularity of the organization and the number of members?

A. Mr. Holtzclaw in his initial remarks inquired from you, who was present as counsel, as to whether the credentials which have been presented by the I. O. E. were, in your opinion, adequate.

Q. Do you recall what was stated on that?

1587 A. You stated that, in your opinion, they were.

Q. We now present a letter dated July 27th, 1937, from Mr. White, counsel for the I. O. E., to myself, representing the Respondent company, to which is attached certain exhibits, and I will ask you whether or not these papers were presented at the beginning of the meeting on July 30th in connection with the point as to proper organization and recognition?

A. They were presented by yourself.

Mr. Moore. We would like to file this, may it please the Examiner, as Respondent's Exhibit No. 13.

Trial Examiner Fort. There being no objection, it will be admitted as Respondent's Exhibit 13-A and 13-B.

(The documents above referred to were received in evidence and marked "Respondent's Exhibit 13-A and 13-B.")

1588 By Mr. Moore:

Q. You will recall that there was attached to these papers also a copy of the constitution and bylaws of the I. O. E., which has already been filed in evidence.

A. There was a copy of the constitution and bylaws attached.

Q. Now, we have somewhat strayed off from where you were talking about the negotiations. Will you go back now to the negotiations, and, referring to your memorandum, continue to state what were the high points and how they were dealt with?

A. I think, at the finish, I said that the negotiating committees broke up into subcommittees for the purpose of handling negotiations for each of the various departments.

Q. Was that at the lunch hour the first day?

A. That was after we returned from lunch on the first day.

Q. Who was in charge of each one of the departments, so far as the management was concerned?

A. For the electric department there were myself and Mr. E. S. Fitz, with counsel assisting whenever we needed him; for the gas departments, Mr. R. J. Throckmorton and Mr. R. C. Brooks. He was not there, I think, on the first day, but did come in on the second, as I recall. For the railway department, Mr. T. Norman Jones. He called in several men from his department that he wished to have assist him. I think he had Mr. Berry, Mr. Porter, Mr. Carroll, and Mr. Cole; and for the general office,
1589 accounting and sales, Mr. P. R. Williams, with Mr. Fulford, and I do not know who else he may have called in.

Q. Now, Mr. Smith, the contract of August 5th, as finally executed, has five main parts in it, has it not; first, the general provisions, and then there are provisions as to the electric department, then as to the transportation, then as to the gas, and then as to the accounting and sales; are they not?

A. There are those divisions.

Q. Did those four groups who negotiated as to the four separate departments that I have referred to, retire to separate offices and discuss the points involved almost as if they were separate contracts to be entered into for those departments?

A. They did.

Q. Then, as I understand it, you got together during the forenoon of the first day on all of the general phases, except the closed shop clause?

A. No; we had gotten together on none of the provisions before lunch. We had disclosed the closed shop clause, and after lunch it was agreed that we did not seem to be getting anywhere on it; so we agreed to go on with the other provisions, and we finished the other general provisions before we split up, and we did split up as soon as they had been finished.

1590 Q. Did you get a substantial meeting of the minds on the other points in the general provisions soon after lunch—fairly soon after lunch?

A. Fairly soon.

Q. The closed shop clause was then deferred without any agreement at all on that?

A. It was.

Q. After your particular group, which you have stated was the electric group, took up the negotiations for the electric

department, what were the high points involved in negotiations in your group—your immediate group?

A. There were three high points, perhaps. The first one, of course, was the matter of wage increase; another was a strong feeling, apparently, on the part of the I. O. E. committee that in the line department wages were more substantially out of line with general wage levels than they were anywhere else; and the third one was the matter of overtime pay.

Q. What was finally done with respect to those main points?

A. The final arrangement as arrived at after—we stayed in negotiation for the balance of that day until about midnight, and for all of the following day from, I think it was, 10 o'clock in the morning up until nearly midnight that day.

Q. How was the matter standing at the adjournment at approximately midnight on the second day of July 1937; how
1591 far had negotiations progressed, and what were the items on which you had been unable to reach an agreement?

A. Well, at midnight, I think the final agreement had been reached prior to that time; my recollection is about 10 o'clock.

Q. That night?

A. That night.

Q. Of the second day?

A. Of the second day. We were in accord on everything except the matter of the closed shop and the matter of the wage increase. It had been agreed prior to that time that in the line departments any men who were required to climb would have a 5 cent per hour flat increase in their wages given to them, and that any wage increase that might be agreed upon as generally effective would apply to those men after the 5 cents had been added to what their wages were at the time when the negotiations started.

Now, at 10 o'clock, as I say, we had still separating us the matter of a closed shop and the matter of the general wage increase.

My recollection is that at that time the company's proposal was that this increase should be 10 percent of the first 30 cents, 7½ percent of the next 30 cents, and 5 percent of the balance for hourly paid men, and that for men paid by the month the same percentages would be applied, except that
1592 the steps were in each case $50. The I. O. E., as I recall it, was still holding out for a flat 15 percent increase. I am not sure that is exactly right, but that is my recollection.

Q. Now, what happened on that night between 10 and 12 o'clock of the second day?

A. When we had reached that point the committees separated and the entire personnel composing the company committee got

together—we understood the I. O. E. committee was going to do the same thing—to see if there was any middle ground with respect to those things on which we could agree.

Q. Just follow it on up and state what was worked out.

A. We finally reconvened at just a little before midnight, as I recall it, and agreed to provisions that were incorporated in the final contract, which was the closed shop provision, with a clause added providing that membership in the I. O. E. did not prevent or should not prevent any employee from being a member of any other organization that he might wish to be a member of, and the wage percentages were agreed upon at 15 percent for the first 30 cents per hour, or $50 per month, 10 percent for the next 30 cents per hour, or $50 per month, and 5 percent on any excess.

1593 Q. Now, the 15 percent that at that stage the I. O. E. was demanding, was that a substantial concession below that which it had demanded in the July 19th proposal?

A. Yes; quite substantial.

Q. In other words, the I. O. E. had made quite a substantial concession and the management had made concessions, and still you were apart to the extent that the I. O. E. was

1594 demanding 15 percent, and you, on behalf of the management, had taken the position that 10 percent, 7½ percent, and 5 percent in these steps that you have described, was all that the company was willing to do.

A. That is correct.

Q. Now, was the concession on the closed shop and this compromise on the wages treated along together as part of the same deal, with a sort of give and take, or not?

A. They were the two final points, and the two propositions went along together; that is, we did not agree on one and then agree on the other. We agreed on the two at the one time.

Q. At any time were you willing or were you reluctant to make any concession on the subject of the closed-shop clause?

A. I was exceedingly reluctant. In fact, I was quite sure that we would not concede that until we got to the final showdown.

Q. Well, at one time did you or not somewhat despair of reaching an agreement on account of the point?

A. I pretty nearly despaired of reaching an agreement on that that first morning. I thought we were going to have to abandon the negotiations.

Q. Now, as part of this closed-shop discussion, was there also involved, as part of that same idea, the demand of the I. O. E. that there be included a check-off on dues?

1595 A. There was that demand.

Q. Was that agreed to at the final negotiation later in the night on the second day, at the same time the closed-shop clause was?

A. It is my recollection that we had agreed to that clause earlier in the negotiations, but with an addition to the clause which provided that any employee could terminate the authority he had given the company to make deductions whenever he chose to do so.

Q. In these negotiations during those first two days, was the question of seniority and classification of employees an important subject that was discussed, and were provisions finally worked into the agreement which had reference to those matters?

A. Both matters were discussed extensively, and clauses were finally written to which both parties could agree, and put in the contract.

Q. Now, what occurred on the third day of the negotiations?

A. On the third morning the entire personnel of both committees met there at the office where we had negotiated.

Q. That would be August 1st; Sunday, August 1st?

A. That is right: Sunday, August 1st, with counsel for both parties present, and with stenographers, and during the day the clauses appearing in the agreement as signed were worked out for the entire group and the contract was typed.

1596 Q. How much of the day was consumed in getting the final draft acceptable to both parties?

A. We were nearly until midnight finishing that day.

Q. Was the agreement which was signed on August 5th—that is, four days later—the identical agreement which was finally agreed upon on Sunday night, August 1st?

A. Yes.

Q. How did it happen that four days intervened after the agreement had been put in final form on the night of August 1st until it was signed, on August 5th?

A. The committee of the I. O. E. stated that before they could accept that agreement or sign it, they would have to take it back to the various divisions and secure the approval of those divisions on it.

Q. So far as this wage increase is concerned that was finally included in this agreement of August 5th, do you know what that wage increase amounted to on an annual basis to the company, approximately?

A. It was approximately $600,000 per year.

Q. Do you know approximately what it would have cost the company on an annual basis if the demands which were included in the proposal of July 19th, 1937, of the I. O. E. had been granted?

A. The figures that we made up on those demands indicated a cost of just about double that—about $1,200,000.

1597 Q. Now, coming back to the meeting of May the 20th——

A. May——

Q. May the 20th, the conference meeting, that lunch conference meeting, will you state whether or not at that meeting in the beginning of the meeting the Wagner Act was discussed and whether Sections 7 and 8 were read to the meeting?

A. Mr. Holtzclaw discussed the Act and did read several sections from it. I think he read more than just 7 and 8. He read several sections to the meeting.

Q. Well, at the meeting here in Norfolk on May 24th, which you attended, was the Wagner Act discussed in that speech?

A. There is one section of the Act included in the speech that was read. In addition to that Mr. Miller read from the Act itself. I think it was Sections 7 and 8 that he read.

Q. Now, was there any discussion at this Norfolk meeting on the night of May 24th about the point that if any wage adjustments were made in connection with these requests that had been presented a few days previously that it would date from the first of next month, namely, June 1st?

A. There was none.

Q. When did you first hear that there had been some such statement made at the Richmond meeting?

A. When I returned to Richmond that day.

Q. Had there been any understanding between you and Mr. Holtzclaw and Mr. Jones that there should be any state-

1598 ment made on that point prior to the meeting of May 24th?

A. There had been some discussion as to the making of such a statement, but no final decision had been arrived at in connection with it when Mr. Jones and I left Richmond.

Q. And you all left about what time of the day on the 24th?

A. We left about 3 o'clock, I guess.

Q. So that any decision which had been made to make such a statement at the Richmond meeting must have been made after 3 o'clock that day?

A. That is correct.

Q. And you did not know that any such statement was made until the next day?

A. No; late that night. We got back to Richmond about 11 or 11:30 and we learned at that time that the statement had been made here.

Q. Now, was there on May 24th any wage increase among the employees of the company in contemplation?

A. Do you mean any specific plan to increase wages?

Q. That is right.

A. No.

Q. Had the company made any increase in wages among employees shortly before that time?

A. In February a raise had been given to employees in the transportation department operating busses and streetcars. At that same time there had been scattered increases given in
1589 railway shops; I think some in the light and power department; but there was no general over-all increase anywhere except in the transportation—among the transportation operators.

Q. Now, what was the trend of business in the company and generally about that date, May 24th?

A. At that time business was very good both generally and in the company.

1590 Q. Would it be fair to say that it was a fairly optimistic viewpoint that the officers of the company had and other business executives had as to future business for the rest of that year?

A. We were very optimistic.

Q. Now, was there at the time of the meeting of May 24th any decision which had been arrived at as to what should be done, if anything, with respect to some increase of wages in response to these requests that had been made shortly before that time?

A. No; there had been no definite conclusion on that at all.

Q. Now, in respect to this meeting of May 25th, the next day, was there any connection between the holding of those two meetings on May 25th and the questions which were put by employees to you gentlemen in the executive position on the previous night?

A. Regarding the questions that had been asked, particularly the one in Norfolk, directed apparently toward securing advice, had convinced us that similar questions were probably going to be asked in very considerable volume of other officers of the company, and it seemed wise to get these people together to let them know the trend in Norfolk; and we understood—so far as I was concerned, I understood the Richmond meeting had taken
1591 steps to impress on them again the desirability of their refraining from offering any advice in connection with those questions.

Q. Now, did you impress on them not merely the desirability but the necessity so far as company orders were concerned?

A. We did. It was very definitely stated that they must refrain from interfering in any way.

Q. Now, after the contract of August 5th was signed and included and having in mind the provision of the period of 90 days from that date was provided before the closed-shop clause became operative, how many of the employees of the company, so far as

you know, refused to become members of the I. O. E. within the time including that 90 days?

A. So far as I know, only two.

Q. Who were those?

A. They were R. E. Elliott, bus operator and transportation man in Norfolk, and A. F., I think it is Staunton, a lineman, also in Norfolk.

Q. It did come to your attention through regular organization channels that those two employees had declined to become members of the I. O. E., notwithstanding the provision in the I. O. E. contract that any employee could be a member of any other labor organization he chose as well as the I. O. E.?

A. It did.

1608 Q. Mr. Smith, have you prepared a memorandum which covers entirely your own personal knowledge of the part you played in the negotiation of the agreement with the I. O. E. July 30th to August 1st inclusive? If so, please read into the record your own memorandum.

And then the record will just show that it is read.

Trial Examiner FORT. My understanding of the agreement was that it is not to be printed in the record but it is to be offered as an exhibit.

Mr. MOORE. Then I will offer such memorandum as an exhibit.

Mr. HILTON. It was my understanding the discussion off the record that the Trial Examiner is permitting you through your witness to read into the record the memorandum which was

1609 just identified. In order not to encumber the record with such a statement, which is approximately 13 pages long, in view of your ruling, Mr. Examiner, I will stipulate that it go in as an exhibit. But I do not agree, of course, that it carries any weight whatsoever but is going in as an exhibit for the sole purpose of cutting down the record.

Mr. MOORE. That is all right.

Mr. HILTON. Of course, I object to its admission in evidence at all.

Mr. MOORE. Of course, we offer the evidence for whatever weight it is entitled to.

Trial Examiner FORT. I understand he does not agree to the truth of the statement.

Mr. MOORE. Yes: I understand.

Trial Examiner FORT. I understand that to be his understanding, or I assume it to be.

It will be accepted in that way.

Mr. MOORE. May we just file it as Respondent's Exhibit No. 14?

(The document above referred to was received in evidence and marked "Respondent's Exhibit No. 14.")

By Mr. MOORE:

Q. In that paper which has been filed Respondent's Exhibit No. 14 have you endeavored to discuss the proposal of July 19, 1937, of the I. O. E. in the light of the agrement of August
1610 5, 1937, as finally executed, and in the light of the agreement of August 5th, section by section?

A. I have.

Q. Is it a correct statement, to the best of your knowledge and belief?

A. It is.

Q. Mr. Smith, refresh your recollection, if you care to do so by any memorandum which you have yourself prepared, and will you review briefly what has been done under your directions in the way of increasing or decreasing the number of employees of the company from and after January 1, 1938?

1612 In January 1936 the company adopted a changed policy with respect to the building of those lines, at the request of the State Corporation Commission. That policy required that lines of that character would be built free of cost to customers to be served if the revenue to be derived from that line was equal to $1\frac{1}{2}$ percent per month of the total cost of construction.

Q. That was in comparison to the $2\frac{1}{2}$ percent which it had been previously?

A. Yes. The cut in the percentage of revenue necessary, or in revenue percentage of construction cost necessary, made possible the building of a great many lines that had not previously been capable of being built. The company actively surveyed and solicited prospective customers, and as a result of that activity, constructed, between January 1936 and
1613 January 1938, 997 miles, according to the records, of such lines.

The WITNESS (continuing). In January 1938 we had only a little over, I think it was, 140 miles of such lines contracted for, but not yet built, and the pressure for building them was very definitely decreasing. Our electric department personnel, of course, had been substantially expanded to take care of this
1614 additional construction. There had also been some unusual maintenance work necessary, due to storms, and that was fairly well back up to date again; so that we were faced fairly with the condition of having more men employed than we had work for. We retained those crews out there—perhaps I

had better insert here that we did not have expansion in crew of this character in the gas department, because there had not been any big expansion program in that department; neither did we have a considerable expansion in the railway department.

Q. The transportation department?

A. Transportation department, though there had been some increase and decrease on various jobs that came up. The crews were retained at practically full strength up until early in March, at which time a substantial amount of the 140 miles of lines had been built.

Now, early in March, the superintendents, the department heads of the company, were called together. The situation that seemed to be facing us was explained to them. They were in agreement that there was not enough work in sight to keep busy all the men we carried on the payroll, and each of them was requested to go back and canvass his situation, to see what savings were possible in the matter of personnel employed and in other directions also. They did go, and as a result of that, submitted lists of discharges which were made during March and April.

1615 Q. Now, how much reduction in force was made in the electric department after January 1st and up to May 1st, on account of the slowing up of the work and the finishing of this new construction work that had been going on?

A. In the Norfolk district there was a reduction of 15 men; in the Richmond district, a reduction of 20; and in the North Carolina district, a reduction of 14.

Q. Were the men who were selected to be released carefully considered, from the standpoint of seniority, individual ability and other factors?

A. Our effort is to endeavor, in the case of any man who is being discharged, to give full consideration to all of the factors, so far as we know them, in connection with him and his connection with the company.

Q. In the determination as to who should be let out in the reduction of forces that you referred to, was any weight whatsoever given to any union affiliations that any individual had, or did you know, as a matter of fact?

A. I did not know.

1616 Q. Well, was there any weight whatever given to that point by anybody in the management, so far as you know and believe?

A. To the best of my knowledge, no.

1617 Q. Will you look at this statement and state for the record how much of a reduction in forces had been made

in the electric department between November, 1937, and through April, 1938?

A. There had been a reduction of 85 men: 1462 to 1377—85.

Q. Now, in the group that was released between January 1, 1938, and May 1, 1938, I believe you said there were 15 men

1618 on the Norfolk electric division.

A. That is the group of releases, not from January, but from March 1st through April.

Q. Well, March 1st through April.

A. Well, as a result of the discussion that we had with the department heads in Richmond these 15 are the men released between the 1st of March and the end of April.

Q. Included in that 15 were Mr. Judge and Mr. Harrell, were they not?

A. That is correct, I think.

Q. Now, has anybody been employed to take the place of any of those 15?

A. I am not absolutely sure as to that. There has not been anybody permanently employed. I cannot say absolutely that some men may not have been put back on temporarily for two or three days on a job here in Norfolk. I do not know.

Q. To the best of your knowledge and belief, has there been?

A. No; not that I know of.

Q. About what date did the present recession or depression—whatever you call it—hit your company?

A. It had become pretty fairly evident by October of last year.

Q. It was getting under way?

A. It was getting under way.

1619 Q. Was it pretty obvious by January that you had the real article on hand?

A. We thought it was.

Q. Was there any other purpose in mind in the reduction of forces here in the early part of this year than simply to economize on expense?

A. And to trim our forces to work that was available.

Q. Did you, or anybody under you, with your authority, ever give you any instructions in respect of work orders on the Norfolk Electric division in the early part of this year, to postpone or not do needed work orders?

A. I never did.

1627 Cross-examination by Mr. HILTON:

Q. I believe you stated that some time in April of 1937 you were reading in the papers in regard to strikes, labor troubles, and so forth, in the Mid West, is that correct?

A. That is correct.

Q. And didn't those articles have particular reference to the labor troubles in what is commonly known as Little Steel?

A. At that time I think most of the excitement was in the motor field, though I believe the steel companies were mixed up in it, too.

Q. And it was in Ohio, too, was it not, and Illinois?

A. It was rather generally all over the Middle West and pretty well to the East, as I recall it.

Q. And there were a number of sit-downs occurring at that time?

A. A good many.

Q. And also active picket lines around a lot of the large plants?

A. That is right.

Q. Violence, deaths, and so forth?

A. Yes.

Q. And was that publicized to a great extent by the local papers, that is, in the Norfolk papers and in the Richmond papers?

A. The Richmond papers are the ones that I am most familiar with. There was a good deal in those of news relative to
1628 labor disturbances. I think the same thing is true of Norfolk.

Q. And was the news greatly publicized?

A. The matter of labor difficulties was continually in the papers, every edition, I think.

Q. And was carried in headlines, was it not?

A. It was.

Q. Do you know what organizations were involved in those particular articles that you read?

A. I think both of the National organizations.

Q. That is, both the C. I. O. and the A. F. of L., is that right?

A. That is right.

Q. I believe you stated that that publicity was of such a character that it would influence men to join unions, is that right?

A. We felt that the publicity was of such a character that it would be disturbing to the men, and some of the publicity, particularly after the validation or action of the Supreme Court in holding the Wagner Act constitutional, it seemed to us to be of a character to indicate that men must belong to some labor organization.

Q. Now, you say "it seemed to us."

A. Yes.

Q. Whom do you mean by "us"?

1629 A. Some of the executives of the Virginia Electric & Power Company.

Q. And by "some of the executives" you mean, say, Mr. Holtzclaw, Mr. Jones, Mr. Throckmorton, and yourself?

A. That is correct.

Q. Did you discuss that situation as it was appearing in the papers at that time?

A. We did.

Q. And did you come to the conclusion that it would be bad for the men, that is, the joining of unions, because of this publicity?

A. That their joining would be bad?

Q. That the publicity would have the effect of causing them to join a union.

A. No. Our opinion was that the publicity would be likely to have the effect of misleading them as to what they should do.

Q. Had you received any information from any source whatsoever that the men were attempting to organize in the Virginia Electric & Power Company around that time?

A. No.

Q. Why was it that you and the members of the executive board of the V. E. P. came to the conclusion that this news about strikes and violence would influence your employees to become members of a union?

1630 A. Our feeling was simply that the continued publication of those things in the newspapers would disturb and upset the men. There was some considerable amount of news relative to concerns more or less locally.

Q. Were there any local strikes on that time?

A. I think there was one in Richmond at Harry——

Q. Friedman-Harry Marks?

A. I think there was one there at the time.

Q. Was that strike on about that time?

A. I think it was on about that time.

Q. Do you recall of any other strikes being on around that time?

A. There was some publicity about a strike in one of the transportation companies there. I think the Brooks Transportation Company, at about that time.

Q. Now, how about on the water front? Were there any labor difficulties occurring on the water front, that is, in Norfolk, of course?

A. I am not sure. There was some difficulty here on the water front along through that period somewhere; I do not know just exactly what time.

Q. And were both unions active in organizing, putting on an organizing campaign in Richmond, Norfolk, and in the State of Virginia at that time?

A. I think they were.

1631 Q. So as a result of that you then decided to issue this bulletin which is in evidence as Board's Exhibit on No. 3. Is that correct?

A. I don't know what Board's Exhibit No. 3 is.

Mr. Moore. You were sort of summarizing a statement but we have not made any such statement.

By Mr. Hilton:

Q. I will show you what is a copy of Board's Exhibit No. 3, Mr. Smith, and ask you if that is the bulletin that was issued around the time we have been discussing?

A. It was.

Q. Have you ever seen any bulletin similar to Board's Exhibit No. 3 at any time prior to April 26, 1937?

A. Do you mean for the Virginia Electric Company?

Q. That is right.

A. No, sir.

Q. Have you ever seen any bulletin or had any discussion with respect to labor activities prior to the bulletin issued April 26th, 1937?

A. No.

Q. Before this bulletin was issued, that is, before Board's Exhibit No. 3 was issued, had you received any demands in the form of a petition or oral demands from any of the employees of the Virginia Electric and Power Company?

A. I testified that, as I recall it, there was one request
1632 originating in the shop here at Norfolk prior to that time for an increase in wages. That is the only one I know of.

Q. Was that a written request or an oral request?

A. I think it was an oral request.

Q. Do you know who submitted it?

A. No; I don't know the men who submitted it. It was submitted to Mr. Cole. That is, the one I have reference to was.

Q. Who is Mr. Cole?

A. He is foreman of the shops, railway and bus shops, down here at Norfolk.

Q. Did you act in any manner at all on that verbal request?

A. There were no increases given as a result of that request at that time, I think. I don't know for sure whether some were subsequently given to some of those men or not.

Q. But you did at some time later receive a written request in the form of a petition signed by a number of men in the transportation department, didn't you not?

A. That is correct. That was from Norfolk.

Q. From Norfolk?

A. Yes, sir.

Q. And that has been received in evidence as Board's Exhibit No. 12.

A. I don't see the exhibit number.

Q. This is a copy of Board's Exhibit No. 12 [indicating].

1633 A. That is a copy of the petition.

Q. How did you receive that petition?

A. That petition came to us in Richmond from the Norfolk office and it was sent up, I think, by Mr. Carroll to Mr. Jones.

Q. And did Mr. Jones give it to you?

A. I don't recall that he gave it to me. We discussed it.

Q. Do you recall when you discussed it?

A. I think it came up just a day or two after it was delivered, or it may have been the next day after it was delivered to Mr. Carroll, and we discussed it very promptly.

Q. And you have heard testimony at this hearing that it was presented approximately May 11th, 12th, or 13th?

A. Yes.

Q. And would it be around that time of the year?

A. Yes.

Q. In the spring of 1937?

A. It was in the spring of 1937.

Q. What action, if any, did you take on this petition?

A. There was no direct action taken on that petition.

Q. Did you endeavor to learn how the signatures on this petition were obtained?

A. No; I made no effort to do that.

Q. Did you give any instructions to Mr. Carroll as to his learning how the signatures were obtained on this petition?

1634 A. I did not.

Q. Did you ever talk to Mr. Bishop about this petition?

A. I did not.

Q. So no action whatsoever was taken on this petition, Board's Exhibit No. 12?

A. Not on that petition by itself; no.

Q. Did you receive any other written petition around that time, let us say?

A. There was another one which came up from the Norfolk shops I think at about that time.

Q. By the Norfolk shops you mean the railway shops?

A. Yes.

Q. The transportation shops?

A. Yes.

Q. Who presented that petition, if you know?

A. That one I don't know about. I think it was presented, or I understand it was, to Mr. Cole. I don't know who received it in Richmond but I think it was also Mr. Jones.

1642 Q. How long before May 29th were the notifications given?

A. For a guess, about two days, but I have not the exact date. It would take about that time to get word to them, so that they could all assemble on the second day.

Q. I believe you stated that Mr. Holtzclaw said to the operating officials present at this meeting that certain requests had been made on the company by certain of the employees with respect to working conditions, that is, hours of employment, rates of pay, wages, and so forth?

A. That is correct.

Q. Did he state from what division this petition or request had come?

A. I think he did in the case of each one of them.

Q. Did he express any opinion as to how the company should deal with such petitions?

A. With petitions; no.

Q. With petitions similar to Board's Exhibit No. 12?

A. I do not think he expressed any opinion as to how the company should deal with that particular petition, if that is what you mean.

1643 Q. Well, did he express any opinion as to what the company should do in the event that the company received numerous petitions similar to Board's Exhibit No. 12?

A. His statement, as I recall it, was that the request that had been received this month indicated a desire to collective bargaining among the employees of the company.

Q. Did he state that that was a proper way for the employees to present their demands for collective bargaining?

A. By petition?

Q. By petition.

A. I don't think he made that statement.

Q. Did he explain how the employees should present any demands for collective bargaining?

A. No. The meeting proceeded from that to a discussion of what action the company should take, if any, in the light of petitions and requests that had been received and the desire that they seemed to evidence.

Q. What was decided upon?

A. It was decided upon, after discussion of these various things, that each man there would go back and ask, through his supervisors, the men who worked with him, to select emmis'aries to attend a meeting at which Mr. Holtzclaw would talk to them.

Q. Now, were the men given any instructions as to what they should tell the supervisors; that is, the officials that were

1644 at this meeting, were they given any instructions as to what they should tell their supervisors?

A. About the meeting?

Q. That is right.

A. They were simply instructed to pass the word along and allow the men—tell the men if they wanted to select emmisaries to hear this talk, they were at perfect liberty to do so. They didn't have to select them unless they wished to.

Q. And, of course, the talk by Mr. Holtzclaw was to be on May 24th?

A. That is correct.

Q. The date was set at that meeting of May 20th?

A. That date was fixed at that meeting, as I recall it.

Q. And the officials present were to tell the supervisors under them, though, that the president wished to speak to representatives of the men in the different groups and departments of the company; is not that correct?

A. That is correct. I don't know just what you mean by "representatives."

Q. Well, you know what a representative is.

A. Well, to me a representative is a man that you select and give to him authority to do something. Now, there was not any effort to get somebody with authority, if that is what you mean by the question.

Q. As I recall it, Mr. Holtzclaw referred to them as
1645 representatives, so that is why I refer to them as representatives; but, of course, there was nothing mandatory about electing emissaries or representatives to attend this meeting on May 24th?

A. It was sought to make it very clear that there was nothing mandatory about that at all.

Q. It was simply an invitation from the president of the company to the men to elect emissaries or representatives?

A. To hear the president's message to the employees: that is correct.

Q. And they could come if they wanted to, or they could stay away if they wanted to?

A. That is correct.

Q. And the reason for that was that Mr. Holtzclaw could not address, practically speaking, all of the employees of the V. E. & P. Company, could he?

A. That is correct.

Q. Now, were the supervisors to instruct the foremen to be very careful as to how they made any suggestions to the men in regard to selecting representatives to attend this meeting?

A. No. They were instructed to make no suggestions as to how they selected the men.

1648 Q. And at that time, or, rather, on the day of the 24th—the day of the 24th—was it decided to change the date of the speech in Norfolk to the 24th, the same as in Richmond?

A. That is correct.

Q. And I believe the purpose of that was to prevent the spreading of any rumors as to why these speeches were being given; is that correct?

1649 A. Well, it was to avoid the possibility that incorrect quotations from the speeches made in Richmond might be spread in Norfolk.

Q. Was that discussed by the executives of the V. E. & P. Co.?

A. It was.

Q. Just tell us the nature, briefly, of the discussions you had along those lines.

A. Well, the discussions were wholly informal. As I said this morning, Mr. Jones, Mr. Holtzclaw, and myself have adjacent offices, and Mr. Moore is in the same building, and informal discussions on all sorts of topics are very, very frequent. The possibility of improper interpretations of what was said in Richmond being brought to Norfolk, if the Norfolk speech was a day later, I think, was discussed for the first time that Monday. I think it was the morning of the 24th, and it was decided then that probably the advisable thing to do, inasmuch as the speech was a written speech, anyway, was to deliver it simultaneously to both locations.

Q. And was the fact that the president of this company was to address the representatives, that is, the employees, might be viewed with suspicion, discussed?

A. I don't think it was.

Q. In view of the fact that he was going to advise the representatives, or, rather, advise the employees, through their

1650 representatives, with respect to their right to form and join any labor organization?

A. All the purpose of that speech was to pass along to the employees, through any emissaries they might select, the company's understanding of what their status was and the company's statement as to the position it took, so that the employees themselves might be fully advised on both those matters.

1651 Q. Had Mr. Holtzclaw ever given any of these fireside chats" before?

A. We had had company-wide meetings before, if that is what you have in mind. We had one something like that the year before that, on the matter of Federal classification of accounts,

which was a matter of company-wide interest, and the people who attended that meeting had to go back, of course, and pass the story to all the people in their department, who were occupied with accounting

Q. Now, at that time, did the different departments select representatives to attend this meeting?

A. No. That meeting corresponded to the May 20th meeting.

Q. To the May 20th meeting?

1652 A. Yes.

Q. Since you have been with the company has Mr. Holtzclaw, at any time, addressed the representatives of the employees with respect to any matter?

A. You mean representatives or emissaries — —

Q. Or emissaries.

A. Picked out from the rank and file of employees?

Q. That is right.

A. I think he has not. I do not know of any occasion.

Q. Now, you and Mr. Jones and Mr. Throckmorton addressed the Norfolk meeting on May 24, 1937, did you not?

A. Mr. Throckmorton addressed the meeting.

1653 Q. Did you say or do anything at that meeting?

A. Nothing more than to make an attempt to answer some few of the questions that were asked.

Q. Do you recall who opened that meeting?

A. Mr. Throckmorton opened it.

Q. And about how many representatives were present?

A. My recollection is that there were about 70.

Q. And did the representatives have to identify themselves?

A. They did not.

Q. You have stated that the employees were to elect or select such representatives as they wished; is that correct?

A. Such emissaries. I am sticking by "emissaries."

Q. All right. If I use "representatives" you may construe it as "emissaries," and I will so agree that the record will show that. Now, at that meeting, were there any men that you know of representing the employees who were not in the employ of the V. E. & P. Co.?

A. At the Norfolk meeting?

Q. At the Norfolk meeting?

A. So far as I know, not. They did not ask the men to identify themselves.

Q. In the event that any of the departments at Norfolk selected an outside representative, would you have permitted him to remain at the meeting?

A. I would not have known the difference. I don't
1654 think—Mr. Throckmorton might have, but I don't think he necessarily would have, either.

Q. So that the representatives who were present at that meeting could have been outsiders and elected, provided they were elected by the employees in the particular department; is not that correct?

A. I presume an outsider could have been there; yes.

1656 Q. Now, when you came to Norfolk did you have any instructions to find out whether or not the representatives were employees of the company or in the employ of the company?

A. I did not. I might interject something there, if you will permit me.

Q. If it is responsive to the question.

A. Well, it is a rather frequent custom at these company meetings for each man to introduce himself. They just did not do it here.

Q. They did not do it?

A. Did not do it.

Q. I believe you stated that Mr. Throckmorton read a prepared speech at the Norfolk meeting.

A. That is correct.

Q. Did he just take the speech, which is Board Exhibit 4, and which you have identified, and just read it in its prepared form?

A. Without introductory remarks, do you mean?

Q. Well, no. After he started the speech did he read it right through?

A. He simply read the speech right through.

Q. Did he comment or make any remarks of any kind on any of the provisions of the speech?

A. I do not recall that at the time of the reading he made
1657 any remarks whatever.

Q. Did he read any paragraph more than once?

A. I think he did not.

Q. Did he emphasize any points in the speech or did he just read it in a monotone throughout?

A. I think he tried to read it as clearly as he could, so that it would be as thoroughly understood as possible.

Q. Well, did he make any gestures in delivering the speech?

A. I do not know.

Q. Well, now, for instance, in reading Section 7, which was set forth verbatim in the speech, did he say that "employees shall have the right to self-organization," and so forth, "and to engage in concerted activities for the purpose of collective bargaining"? Did he read it in a tone similar to that?

A. I think he read the section exactly as it is set forth in that speech, and, as I say, he tried to make it, his reading of it, as clear and as easily understood as he could. I can not tell you of his voice inflections or gestures.

Q. Well, do you recall whether or not he emphasized the fact that employees did not have to join any labor organization?

A. I think no more than just what is in the speech, just as it is written.

Q. Just as it appears in the speech?

1658 A. Just as it appears in the speech.

Q. Now, what remarks did he make to those present before he read the speech?

A. My recollection is simply that he told the men assembled that there was a meeting being held in Richmond at about the same time, at which the prepared speech was being read, which he was going to read. Then he proceeded immediately with the reading of his speech. His introductory remarks, as I recall, were very, very brief.

Q. Was he interrupted at any time while the speech was being read?

A. I think he was not.

Q. And when he had concluded the speech did he ask those present if there were any questions they wished to ask?

A. He did.

Q. And approximately how many people asked questions?

A. I do not know. A number of them. Some people asked more than one question. I should think there might have been—oh, I don't know—25 or 30 questions asked, perhaps, altogether.

Q. And they were asked by 10 or 15 different persons, say?

A. I guess so.

Q. Now, did any of the representatives present ask for pay increases at that meeting?

A. No.

1659 Q. Were pay increases discussed at all at that meeting?

A. No; there was no mention of pay increases while we were at the meeting.

Q. I believe you stated that one lady asked if she had to join a union?

A. That is correct.

Q. Who answered that question?

A. I think Mr. Throckmorton answered that question.

Q. And I believe you stated that Mr. Throckmorton told her that she did not have to join a labor organization; is that correct?

A. If she did not wish to.

Q. If she did not wish to?

Y. Yes.

Q. Did he tell her that in the event that the company entered into a closed shop agreement with any union that she would then as a condition of employment have to join a union?

A. I am sure he did not. The closed shop was not mentioned at all.

Q. Now, before the meeting really started did anyone, or, say, did you and Mr. Throckmorton ask if there were any foremen or supervisors present, other than yourselves, of course?

A. No.

Q. To your knowledge, were any foremen or supervisors present?

1660 A. So far as I know, no.

Q. Do you know most of the foremen and supervisors in the Norfolk area?

A. I doubt that I would recognize anywhere near all of them.

Q. Was any reference made at this meeting to the petitions, both oral and written, which the company had received with respect to rates of pay and general working conditions at the company?

A. I think no mention at all.

Q. Was any mention made as to what kind of union the company preferred to deal with, if any?

A. We were very careful not to mention any preference at all. That question was asked, and the answer to it was that the company could not and did not want to express any preference; that the matter of what the men did was one wholly for their own determination.

Q. Do you recall the specific question asked with respect to what kind of union the company would favor?

A. I do not recall the wording of the question. That particular question was asked in two or three different guises, as I recall it, the effort being apparently to secure some statement as to what the company thought the employees should do, and we avoided any answer to it.

Q. Now, was any question propounded, say, as to whether

1661 or not the company would favor the C. I. O., the A. F. of L., or an independent organization?

A. I do not think any question was asked in that form: I do not recall.

Q. Or the fact that the C. I. O., an industrial organization, or the A. F. of L., a craft organization, would be preferred by the company?

A. The company certainly did not express any preference.

1662 Q. There were those questions asked?

A. I don't recall that there were any questions asked as to any body with any specific name. I don't remember that there were.

Q. And you have stated here the company did not prefer the C. I. O. to the A. F. of L., and vice versa?

A. It stated no preference whatsoever.

Q. Was there any mention made at that meeting as to a system-wide organization?

A. There wasn't anything said on that either. The meeting was rather brief. After the paper had been read these questions that I have spoken of were asked, and there was no discussion by the company representatives as to any of those points.

1663 Q. You had discussed the fact that the company had received these petition with respect to the different departments and the different groups of men?

A. With whom?

1664 Q. With Mr. Holtzclaw?

A. Yes.

Q. And with the other officials of the company?

A. Yes.

Q. And that was not a satisfactory way of dealing with the question?

A. That is correct.

Q. In other words, you could not give any group of men a raise in Norfolk and not give a group a raise in Petersburg during the same time and doing the same kind of work?

A. That is correct.

Q. Now, about the only question you answered at that meeting was the one that the lady asked in regard to whether or not she would have to join a union?

1665 A. I think that was the only one that received a direct, definite answer.

Q. You changed the date of this meeting from the 25th to the 24th?

A. Yes.

Q. Do you know how the representatives were notified of that change?

A. I don't know the details of notifying the men who had been selected. The start of the change I think came from me, and I called Mr. Throckmorton and asked him to get the word around that the meeting had been shoved up a day.

Q. Did you have any knowledge as to the names of the representatives who had been selected by the men to attend that meeting in Norfolk?

A. No, sir.

Q. Do you know whether or not Mr. Throckmorton had any knowledge as to the names of the men?

A. I don't know. He may have known some of them.

Q. After the meeting, when the speech was completed and the questions were answered, so far as you were concerned, you left?

A. Yes.

1666. Q. Did the other representatives remain as you and the other officials left?

A. As we went out, or just before we went out, we said we were leaving the meeting and if they wished to stay there and discuss what had been said to them they were at liberty to do so.

Q. What was your idea as to what they were to discuss?

A. Whatever they wished.

Q. Do you mean the formation of a union?

A. Anything they wished to discuss.

Q. If they wanted to form a union it was all right?

A. We left them perfectly free and——

Q. And if they did not?

Mr. MOORE. Let him finish the question, please.

Mr. HILTON. I thought he did.

The WITNESS. We left them perfectly free to do whatever they wished to do.

By Mr. HILTON:

Q. And if they did not wish to join one, all right?

A. That is right.

Q. Or for a one?

A. That is right.

1669 Q. And before you came to Norfolk to that meeting did you have instructions, after the speech had been read and certain questions that were asked were answered, to leave the meeting and tell the men to discuss it themselves?

A. It had been agreed that when we finished with the meeting in each case the officials would go out and leave the men to talk, if they wished.

Q. Did Mr. Holtzclaw, when you met him in Richmond, tell you he had spoken in regard to wages?

A. What do you mean?

Q. When you went back on the night of May 24th and met Mr. Holtzclaw and Mr. Moore in the Virginia Electric and Power Company Building, did Mr. Holtzclaw at that time tell you that he had discussed wages at his meeting in Richmond?

A. Do you mean the statement as to any increases, if they should be agreed upon, being effective on June 1st?

Q. Yes.

A. He told me that he had said that.

1670 Q. Did he ask you if you had made the same statement to your meeting in Norfolk?

A. I don't remember if he asked me or not; but I told him we had not.

Q. Had you had any previous arrangement as to a discussion on wages?

A. What do you mean?

Q. In regard to the meetings?

A. As to that particular feature?

Q. Not that particular feature, but as to any discussion of wages that you were to have before these meetings which were to be held on May 24th?

A. No; we had no discussion as to any wage arrangement.

Q. Were you surprised to learn Mr. Holtzclaw had made such a statement to the representatives in Richmond?

A. That is what I was getting at when I asked you if you meant that particular night. There had been some discussion of the possibilities of making such a statement, but it had not been definitely decided upon when Mr. Jones and I left Richmond.

1672 Q. At any time after you got here on the evening of the 24th did you talk to Mr. Holtzclaw before the meeting in Norfolk started?

A. We did not.

Q. Did you talk to any of the executive officials of the company in Richmond, let us say, before this meeting started?

A. No.

Q. The next day, I believe, you stated you had a meeting of the executives and the department and subdepartment heads in Richmond. Is that correct?

A. That is correct.

Q. And at the first meeting you described what had occurred at the meeting the night previous? Is that correct?

A. Yes, sir.

Q. How were these subdepartment heads notified to be in Richmond for that meeting?

A. That Richmond meeting was just for the men in Richmond. It didn't cover men from Norfolk.

Q. No Norfolk men were present at that meeting?

1673 A. No; no Norfolk men were present at that meeting. They were just notified by telephone.

Q. Where was that meeting held?

A. It was held in the board room of the company, on the fourth floor.

Q. Was there a similar meeting that was held in Norfolk?

A. There was.

Q. You attended the Richmond meeting, did you not?

A. I did.

Q. And did you explain to those men exactly what had occurred at the meeting the night before?

A. In Richmond?

Q. Yes.

A. Mr. Holtzclaw explained it in Richmond.

Q. Did you state to those representatives what had occurred at Norfolk the night before?

A. I imagine I did, although I am not sure whether I told them that in Richmond or not.

Q. And the main purpose of that meeting was to issue instructions in regard to labor organization activities and the attitude that these men should take? Is that correct, Mr. Smith?

A. The main purpose of the meeting was to advise those men that apparently there was a good deal of confusion and a good deal of desire for information or advice among the men
1674 which would probably result in their being asked a good many questions.

Q. I did not hear that last, Mr. Smith. What was it that you said?

A. I said "which would probably result in their being asked a good many questions."

Q. You mean as a result of these speeches that there would probably be a great many questions asked of foremen with regard to union organization? Is that correct?

A. Not necessarily as a result of the speeches, but because our contact at the meeting in Norfolk, which is the only one I know anything about directly, had indicated that the men did want to try to secure some idea from the company as to how, perhaps, they should function.

1675 Q. And did any of the men at the Norfolk meeting ask personally and privately any questions in regard to labor organizations?

A. At which time do you mean?

Q. On May 24th.

A. No. Do you mean any of the emissaries that had come there?

Q. Yes; that is right.

A. No; the questions were all asked at open meetings.

Q. Had any employee who was not an emissary this meeting talk to you in regard to labor organizations?

A. On the night of the 24th?

Q. On the night of the 24th.

A. No.

Q. Did any of the foremen or officials talk to you in regard to labor organizations on the night of the 24th?

A. No; I do not recall that there was any discussion of labor organizations on that night.

Q. I believe you stated that you had cautioned these heads that they must be careful and not influence the men one way or the other; is that correct?

A. You are talking about the 25th, now?

Q. The 25th.

A. Yes.

Q. Were any written instructions given?

1676 A. No.

Q. Was the speech that was prepared by Mr. Holtzclaw and delivered on May 24th Board exhibit No. 4, given to the supervisors present at this meeting on May 25th?

A. Do you mean copies of it?

Q. Mimeographed copies.

A. I think not. I think it was merely read them and amplified by discussion.

Q. And I believe you stated that 15 or 18 officials attended this meeting?

A. I think that is about the right number.

Q. What would you say was the lowest official present at this meeting on May 25th?

A. Why, a superintendent, I guess, would be about as far down as that went.

Q. Were the superintendents, then, instructed to, in turn inform their foremen and officials working under them as to the attitude in the event that they were questioned by employees in regard to labor organizations?

A. They were.

Q. Were any written instructions issued at that time in regard to labor organization activities?

A. At the time of our meeting?

Q. On the 25th.

A. No.

1677 Q. Were any written instructions in that regard ever issued by the company?

A. Not that I know of.

Q. And if any such instructions were issued, you would have known of them, would you not, Mr. Smith?

A. I think so.

Q. Did you hold two meetings or one meeting in Richmond on May 25th?

A. Only one.

Q. And the other meeting was held in Norfolk?

A. In Norfolk.

Q. Did you attend the meeting in Norfolk?

A. I did.

Q. And did substantially the same thing occur there that occurred in Richmond?

A. Just the same.

Q. Was Mr. Throckmorton present at the Norfolk meeting?

A. Yes.

Q. At any of those meetings did any of the superintendents ask any questions in regard to labor organizations?

A. How do you mean—in regard to what their attitude should be?

Q. That is right.

A. I am very sure that they did. I do not remember any specific questions, but the topic was rather generally
1678 discussed.

Q. Do you remember any specific superintendent asking such questions?

A. No, sir; I do not think I remember any specific superintendent.

Q. Now, did you firmly impress upon the officials at these two meetings that the instructions that you had given must be carried out to the letter by the foremen working under them?

A. We tried to make it very clear.

Q. And in the event that those instructions were disregarded by the superintendents, did you tell them what, if any, disciplinary action would be taken against them?

A. No; we do not ordinarily have superintendents doing otherwise than they are instructed.

Q. Now, how about the instructions that the superintendents issued to the foremen working under them? Did you tell them what disciplinary action, if any, you would take if those instructions were violated?

A. No.

Q. I believe you stated that you have no reason to believe that the instructions thus given at those two meetings on May 25th were not carried out?

A. I did.

Q. Was any instance ever brought to your attention or
1679 any complaint by any man that such instructions were being violation by the foremen?

A. No.

Q. You have heard Mr. Reutt and Mr. Elliott both testify that Mr. Bishop told them to form an inside organization?

A. I heard that; yes, sir.

Q. Did you consider that a violation of the instructions that you had issued?

A. If Mr. Bishop——

Q. Provided he said that.

A. If he did say that, that certainly is not what he had been instructed to say.

Q. And in the event that Mr. Bishop did say that, what, if any, disciplinary action will you or would you take against him?

A. When do you mean?

Q. As of any time.

A. Why, if we had known about we would certainly have called Mr. Bishop in and reminded him about what he had been asked to do, and urge upon him that he should be careful not to do anything of that kind again. I imagine nothing more than that the first time.

1680 Q. Now, in the event that he violated it the second time, what, if anything, would you do?

A. Well, that I can't tell you. You are going too far in the future.

Q. Well, would you have fired him?

A. Of course, any man who violates definite and specific instructions that are given to him by his superior should be dismissed.

Q. Now, do you know whether or not any of the supervisers in the transportation department ever spied upon any meetings?

A. I do not know.

Q. That has never come to your attention, has it?

A. No.

1681 Q. Did you tell the officials present at those meetings of May 25, 1937, that employees were not to solicit membership in any labor organization on company time, say, during working hours: I will change it to that extent.

A. We passed along definite instructions that company property of any kind could not be used by any labor organization of any kind, and that the solicitation of memberships by a labor organization could not be permitted on company property or in working hours.

1682 Q. They were definite instructions, were they not?

A. They were.

Q. And who issued those instructions?

A. It came from the executive personnel. Now, whether I did the actual work, or Mr. Holtzclaw or Mr. Jones, I cannot tell you.

Q. Well, that is what I wanted to know, whether you or Mr. Holtzclaw or Mr. Jones issued those instructions.

A. I can't tell you who actually said them or made the statements. I think some of them came from each one of us.

Q. Has it ever been brought to your attention that any men working, say, in the line department, were solicited for membership in the I. O. E. during working hours?

A. It had not up until this hearing started.

Q. I believe you stated that from May 24th to June 15th you had no knowledge of any union whatsoever among any of the employees of the V. E. & P. Co.?

A. That is correct. There was a period of almost complete quiet.

Q. And then in July 1937, a letter was received by the company, which is in evidence as Board's Exhibit No. 5. I now show you a copy of Board's Exhibit No. 5, and ask you if that is the first knowledge you had of any labor organization among the employees of the V. E. & P. Co. [handing a document to the witness]?

1683 A. This is the first definite knowledge I had.

Q. Did you have any knowledge at all that there were any labor organization activities among the employees of the V. E. & P. Co.?

A. We had no—or I had no knowledge.

Q. Well, you stated that this was the first definite knowledge that you had.

A. The only thing that had come to me in that interim period were various rumors and articles that appeared in the newspapers, et cetera.

Q. What were those rumors?

A. Oh, they were rumors that certain numbers of men in one set had joined the C. I. O., and some men in another had joined the A. F. of L. There were all sorts of rumors going around.

Q. Did you discuss those rumors with Mr. Holtzclaw?

A. I expect that I did casually. There was nothing definite that came up in all that period.

Q. That did not cause you any concern: did it?

A. No.

Q. Were these articles that you read in the newspapers appearing in a prominent place in the newspapers?

A. Well, fairly prominent. I do not recall that any of them were headlined on the front page, but I think they were where they could be seen without much effort.

1685 Q. Now, that letter was signed by Eugene Underwood. Do you know Mr. Underwood?

A. The incoming letter, you mean?

Q. Yes, the incoming letter, Board Exhibit 5.

A. I do know him, yes.

Q. What is his connection with the V. E. P.?

A. He is a clerk in the system dispatcher office.

Q. And who was his immediate superior around the time of July the 19th, 1937?

A. His immediate superior was Miles Cary.

Q. And who was Mr. Cary's superior?

A. Mr. Cary reported direct to Mr. Fitz.

Q. And how many other men worked under Mr. Cary?

A. He has, I think, two or three, perhaps. I do not know just how many he has in his office.

1686 Q. Do you know what kind of work Underwood was doing at that time?

A. He was one of Mr. Cary's clerks, keeping records of power station operation, outputs, efficiencies, stuff of that kind.

1688 Q. Did you ever talk with Underwood before he wrote this letter in on July 19, 1937?

A. I never did. I did not know Underwood at all.

Q. Did you talk to him at any time after the letter was written in and before July the 30th, 1937?

A. I am not sure. I think that I met him between the time the letter was written in and the time when actual negotiations started; but I am not positive.

Q. Now, what is your best recollection, that you did meet him or that you did not meet him?

A. I think that I may have met him.

Q. Do you recall the occasion that you may have met him?

A. No, not unless it was just a casual meeting. That was the first I knew, when that letter came in, that Underwood was the head of an organization, and I think that I met him between that time and the time the negotiations started.

1689 Q. Now, I believe you were chosen to act on behalf of the company during these negotiations to commence on the 30th of July, 1937; is that correct?

A. I was appointed to act as chairman of the company negotiating committee.

Q. Do you recall who was on the committee on behalf of the I. O. E.?

A. I can recall some of them. Do you want me to name them as far as I can go?

Q. Yes. As far as you can go.

A. It was Mr. Underwood, Mr. Faust, Mr. Bertolet, Mr. Tatem, Mr. Clark, Mr. Hough, Mr. Wash—I do not recall if there were any more or not.

(Mr. Hilton shows a paper to the witness.)

The WITNESS. Underwood, Tatem, Bertolet, Walsh,
1690 McHorney, Faust, Hough, Wash, Clark, Woodard.

Mr. HILTON. And Mr. White, the attorney.

The WITNESS. Yes.

1691 By Mr. HILTON:

Q. Now, Mr. Smith, I show you a copy of respondent's exhibit No. 13 and ask you if you had any knowledge of the contents of that exhibit before this meeting of July the 30th, 1937.

A. I do not recall seeing that. I think I knew that it had come in, but I do not recall whether I did see it or not. I think it just came up in a conversation.

Q. Now, I show you what is in evidence as respondent's exhibit 13a, rather, a copy of that exhibit, and ask you if you had
1692 any knowledge of that document before July the 30th, 1937.

A. I think that is in the same category with the letter. I think I knew that it was in, but I do not recall seeing it.

Q. The letter also states that the constitution and bylaws of the I. O. E. are enclosed. Do you recall seeing the constitution and bylaws of the I. O. E.?

A. I have never seen the constitution and bylaws.

Q. In other words, you left that up to Mr. Moore, your general counsel, did you not?

A. That is correct.

Q. So that when you went into this meeting on July the 30th you took for granted that all preliminary steps had been taken care of and that you were now ready for negotiations; is that correct?

A. On Mr. Moore's statement that that is so.

1693 Q. Did you ever discuss the constitution and bylaws with Mr. Moore?

A. No.

Q. Have you seen the bylaws? Have you seen the constitution and bylaws since this hearing started?

A. Of the I. O. E.?

Q. Yes.

A. No.

Q. I now show you a copy of Board's Exhibit No. 36, which is the constitution and bylaws of the I. O. E., and I will ask you if this is the first time you have seen the constitution and bylaws of that organization?

A. This is the first time I have seen it.

Q. As to this memorandum which you prepared, which is Respondent's Exhibit No. 14, did you prepare that memorandum from memory, Mr. Smith?

A. I did.

Q. And these occurrences happened over a period one year ago, didn't they?

A. These are occurrences which happened on July 30th, July 31st, and August 1st of 1937.

1700 Q. I mean when this conference on July 30th between the two committees started; what was the first matter that you discussed?

A. At the meeting?

Q. Yes.

A. When do you mean, Mr. Hilton? Do you mean when we first convened or when we began negotiating? Just when do you mean?

Q. What was the first thing you did when the two committees sat down, if you did sit down?

A. The first thing, as I recall it, were a few remarks by Mr. Holtzclaw relative to what was going on and the request by him to Mr. Moore for a statement as to whether he was satisfied that the group which had met there was properly designated to negotiate on behalf of the employees.

Q. Did someone raise the question on behalf of the I. O. E.?

A. No. Mr. Hilton, do you mean as to whether or not they were properly there?

1701 Q. Yes.

A. No. Mr. Holtzclaw asked Mr. Moore as to whether or not they were a proper group, properly representing the men, so that the company could properly deal with them.

Q. What did Mr. Moore say to that?

A. Mr. Moore stated that in his opinion they were.

Q. Did Mr. Moore state his reasons for coming to that conclusion?

A. I think he made mention of the letter that he had received from Mr. White with the attached tabulation which you showed me here a little while ago as the proper reason why he felt they were properly selected.

Q. Were you in on any of the discussions before July 30th, 1937, wherein you saw any evidence that the I. O. E. represented a majority of the employees that they were claiming to represent for the purpose of collective bargaining, Mr. Smith?

A. I don't recall any such discussion.

Q. Do you know whether or not any membership cards were submitted to the officials of the company?

A. At or about the time when the bargaining started membership cards were submitted. I don't know the exact date of that submission.

Q. Do you know how many membership cards were submitted?

A. I don't recall if I did know.

1702 Q. Was there any discussion had as to the unit appropriate for the purpose of collective bargaining among the employees of the V. E. & P. Company?

A. Do you mean at that meeting?

Q. Yes.

A. The statement was simply made by Mr. Moore that, in his opinion, the group which was present there was properly constituted to bargain for all employees of the Virginia Electric & Power Company.

Q. Had you discussed that particular question before the meeting of July 30, 1937?

A. Had I?

Q. Had you?

A. I think I had not discussed that at all. I understand that there had been some discussion of it between Mr. Moore and Mr. Holtzclaw, but I don't recall that I was in on any of it.

Q. Did you ever discuss that question with Mr. Holtzclaw?

A. I don't recall any discussion of it.

Q. What was the unit appropriate for collective bargaining in this case; that is, at the meeting of July 30th?

A. The unit as it was set up in the I. O. E. set-up, which Mr. Moore approved, was the company as a whole.

Q. Can you tell us the group that was designated as the unit appropriate for the purpose of collective bargaining, Mr. Smith?

1703 A. I say, as he——

Q. I am asking you now.

A. As he certified it to us it was the company as a whole.

Q. The company as a whole?

A. Yes.

Q. You did not take in foremen or supervisors, did you, Mr. Smith?

A. I misunderstood what you meant by unit, apparently. I thought you meant whether it was the railway department, the light and power, or what have you.

Q. I am just asking you this question: You stated you read over the National Labor Relations Act and you were pretty familiar with it as a whole.

A. Yes.

Q. Now, Mr. Smith, I am asking you what unit you were dealing with on behalf of the members of the I. O. E.

A. I don't get what you mean by unit, Mr. Hilton.

Q. Don't you know what a unit is?

A. Yes. A unit is one.

Q. A unit is one, isn't it?

A. Yes.

Q. The Act states that a unit—— Well, I will withdraw that. Maybe the Act is clearer than I can make it.

Have you ever read section 9 (a) of the National Labor Relations Act?

A. I am sure that I have.

1704 Q. You may hold that, then, for a moment.

Mr. MOORE. He has already answered your question. He said he understood he was dealing with the employees as a whole.

By Mr. HILTON:

Q. You mean all of the employees constituted a unit appropriate for collective bargaining?

A. That is the way it was handed us by Mr. Moore, that this was a proper unit to deal with, for the employees of the company as a whole.

Q. Now, did anyone else make any opening remarks before you got down to business?

A. I think no further remarks were made, other than a few that Mr. Holtzclaw made.

Q. Who was doing most of the talking on behalf of the I. O. E.?

A. They all talked. Mr. Faust was very active. Mr. Tatem was very active. I think, perhaps, those two did more talking than the others.

Q. Who presented the demands on behalf of the I. O. E. for the first time at this meeting?

A. The proposal had been presented by Mr. Underwood, accompanied by a letter. We had had the proposal copied, and there were several copies of it available there at the meeting. Now, the presentation of the demands, I don't know just what you mean by that. Mr. Faust and Mr. Tatem spoke.

1705 When we came to the electric department, they spoke on behalf of the various problems in there that applied to the particular departments where they would apply. Mr. Faust took the lead so far as the distribution department was concerned.

Q. I do not mean to cut you off, but who first opened the discussions in regard to the proposed agreement? Was it your committee or was it Tatem's committee?

A. I can't tell you who fired the opening gun. We all had copies of the agreement, and just started in on Clause 1

1706 Q. I hand you what is in evidence as Board's Exhibit No. 8, which is the proposed agreement as submitted by the

1707 I. O. E.; is not that correct, Mr. Smith [handing a document to the witness]?

A. That is right.

Q. Now, as to recognition, you did not have much to do with that; did you?

A. We did not.

Q. That was already taken care of by Mr. Moore, as you went into before?

A. One little change in Clause A on recognition; as submitted, the contract on the proposal provided that the employee organization could use the bulletin boards of the employer, and that was stricken out, so that it merely reads that they could put up their own bulletin boards.

Q. What was your next discussion on there, in regard to the terms of Board's Exhibit No. 8?

A. You mean after this?

Q. After that?

A. The next discussion was on the closed shop provision.

Q. Who was arguing principally on behalf of the I. O. E., the closed shop provision?

A. I think all of the members of the entire committee argued. I should say that Mr. Underwood, Mr. Faust, and Mr. Tatem were probably the three most vociferous of the committee.

1708 Q. And who was argaing against that on behalf of the company committee?

A. I was arguing against it very strongly, and was backed up by all the other members of the committee, and by Mr. Moore.

Q. And you had had that proposed agreement for a period of approximately ten days or so, had you not, before this meeting of July 30th?

A. About that.

Q. Had you discussed the closed-shop provision in the proposed agreement with Mr. Holtzclaw?

A. We had.

Q. And was Mr. Holtzclaw opposed to the closed-shop agreement?

A. Very definitely.

Q. Did you have any authority to enter into a closed-shop agreement without his final consent?

A. No, sir.

Q. And did you also have in this respect the advice of Mr. Moore, your counsel?

A. With respect to the closed-shop provision?

Q. The closed shop.

A. The proposal was discussed by Mr. Moore, Mr. Holtzclaw, Mr. Norman Jones, and myself, and I do not know how many others, and we were all completely in accord, that such

1709 provision was something that we could not accept.

Q. You mean you would not accept it? It was the understanding among you men, among the men that you have just mentioned, that you would not accept any contract with a closed-shop provision in it?

A. That we would not accept the closed-shop provision in this contract.

Q. And that was definitely settled, was it not?

A. That was something that we had already agreed on.

Q. And in the event that the I. O. E. was persistent in their demands for a closed-shop agreement, that would cut off negotiations, would it not, as far as any agreement was concerned?

A. On the basis of the understanding that we went into that meeting; yes.

Q. And how long did you argue this closed-shop provision on July 30, 1937?

A. That is on the final go-around?

Q. That is right.

A. I think about two hours.

Q. What reasons were advanced principally as to why you should have a closed-shop agreement?

A. The reason advanced by the I. O. E. committee, you mean, do you not?

Q. That is right.

1710 A. [Continuing] Was that they hoped and expected that through their organization, improved wages and improvement in working conditions would be secured, and that these improvements would be beneficial to all employees of the company, and that, therefore, it was only right and proper that all the employees of the company who could benefit from these improvements should bear their fair share of the cost of obtaining them.

Q. What were the principal arguments against such a provision in the agreement?

A. Our argument was that we felt very strongly that there should not be forced on any employee, either present or prospective, the necessity of joining any organization as a necessary part of obtaining or retaining, in the case of a present employee, his job with the company.

Q. And did you discuss the problem generally along the line that you have just related?

A. We did.

Q. For a period of about two hours.

A. About two hours.

Q. And then, at your suggestion, you went to lunch.

A. I don't know whether the lunch was at my suggestion or not, but it had gotten to be lunch time and we did separate for lunch.

Q. Now, did you and any of the officials of the company
1711 discuss the closed-shop provision during lunch time?

A. I think very probably it was—we did discuss it to the extent of detailing the experience that we had had with it up to that time.

Q. Now, were any members of the committee of the I. O. E. opposed to the closed-shop agreement?

A. I think some of them. I do not recall that many of them were.

Q. Did all of them join in discussing the closed-shop agreement or just the two or three you mentioned?

A. I think they all joined in.

Q. Did you talk with Mr. Holtzclaw at lunch time with regard to this provision in the contract?

A. I can't state definitely. I think we all had lunch together, and we did discuss the progress that had been made up to the time of going to lunch.

Q. Well, did you reach any conclusion at that time that you could not come to any agreement on the closed-shop provision with the I. O. E.?

A. During lunch?

Q. During lunch.

A. No.

Q. Did you then decide that you would discuss some other matters in the agreement and let the closed-shop provision go until some later time?

1712 A. I think the suggestion that that closed-shop provision be set aside for the time being came from me. I do not know whether I made that suggestion to Mr. Holtzclaw or not during lunch, but I did make it when the meeting reconvened after lunch.

Q. Did you get any suggestions from Mr. Holtzclaw in addition to that conference that you had with him in regard to the proposed agreement?

A. At that time I don't think so.

Q. How long did it take you for lunch that day?

A. I think about an hour.

Q. And you did not go to lunch with any of the I. O. E. committeemen; did you?

A. I did not.

Q. Then, when you returned for further discussion it was your suggestion that you go to some other phase of the proposed agreement?

A. That is correct.

Q. Was there any objection made to that on the part of the I. O. E. committee?

A. I think no substantial objection, anyway. I don't recall any objection to going on at all.

Q. Had the discussions in the morning been of a heated nature?

A. At times a little bit heated.

1713 Q. Almost came to blows at any time?

A. Well, I did not.

Q. Well, did any of the members of the I. O. E. almost come to blows between themselves?

A. No; I don't think so. Everybody was pretty serious and pretty earnest about it on both sides.

Q. Well, did any of the I. O. E. committeemen get into argument between themselves in regard to that closed-shop provision?

A. I think not. I do not recall any arguments between the members of the I. O. E. committee.

Q. And you do not recall whether or not any of them opposed, themselves, the closed-shop provision; do you?

A. I said that I was quite sure that they had.

Q. After you had tabled the closed-shop provision, then what did you go on to?

A. We proceeded then with the other clauses in the general section of the agreement, and by "general" I mean those general clauses which applied to all departments of the company.

Q. And would that be, say, termination of employment?

A. Collection of dues, termination of employment——

Q. Well, the collection of dues——

Mr. MOORE. He has not finished answering the question.

Mr. HILTON. I presumed he was going on with the entire
1714 agreement.

By Mr. HILTON:

Q. You next, then discussed the question of the collection of dues, did you not?

A. I think that is correct.

Q. And the proposed agreement provided for a check-off, did it not?

A. That is correct.

Q. Now, had you discussed the check-off system with any of the officials of the company before this meeting on July 30th?

A. I think I undoubtedly had. I do not recall any specific discussion of it, but it was my thought and I am sure that we had already agreed among ourselves in the management committee that that was what we would seek to do, that that check-off should be modified, so that an employee would state for the company whether he would or would not permit the check-off to be applied to him.

Q. You mean the company was opposed to any closed-shop agreement, but they had no objection to some kind of a check-off system; is that right?

A. If an employee directs the company to take a certain amount of money out of his pay check for most any purpose, each month,

and pay it somebody else, the company does that as long as it does not become so widespread as to be a nuisance.

1715 Q. Well, did you have any lengthy discussion of the check-off at the meeting of July 30th?

A. Not very extensive, as I recall it. It was modified in accordance with the company's suggestion.

Q. Can you tell us in what respect it was modified [handing document to the witness]?

A. I will have to read the two at the same time. It was modified by adding a sentence which read:

"Any such assignment may be revoked at any time by notice in writing given by the employee to the employer."

Q. Do you know if any of the assignments have been revoked?

A. I cannot answer from my own knowledge, except that if they had been revoked, of course, the employee has automatically ceased to be an employee 90 days after they are revoked.

Q. In other words, a man has a right to revoke that, but

1716 if he does revoke it, he is fired?

A. He is now, at the end of that period.

Q. So that you do have a 100 percen k-off with the I. O. E. at this time?

A. For members of the I. O. E.

Q. Oh, yes; for members.

A. Yes.

1717 Q. So that the sentence added at the suggestion of the committee for the company really had no bearing whatsoever on the check-off, did it?

A. It probably did not in the final analysis. It would have if the company's idea had prevailed and the closed shop was modified in some fashion.

Q. Now, about how long would you say you spent in discussing this check-off system?

A. Well, I cannot give you any definite length of time. I do remember the closed shop, because it ran through from the time we started until lunch. As to just how much time was spent on each of the other classes, it would be perfectly impossible for me to tell. It was not very long on that particular one. There was not a great deal of discussion on that.

1719 Q. Now, then, the third point that you discussed in the proposed agreement was the termination of employment; is that correct?

A. That is correct.

Q. Did you discuss that very long?

A. Not very extensively.

Q. And what changes, if any, were made as a result of the discussions that you and the I. O. E. committee had in regard to Section 3?

A. In the initial proposal there was a wide-open clause permitting a discharged employee to appeal at any time. At the company's suggestion the time was limited to 30 days.

There was another proposal which would have forced the company from considering any outside talent for any positions which might become vacant until after all of the personnel within the company had been considered, and that was eliminated.

I think those are the only two changes in that particular clause.

1720 Q. Well, can you tell us what substantial changes were made?

A. Wages and closed shop were the two biggest.

Then there was a rather extensive provision to cover overtime work, which was incorporated in the construction-distribution end, and a good deal of time and argument was used up on that overtime clause.

Another thing——

By Mr. MOORE:

Q. Mr. Smith, right there, had there been any set-up in the company for extra time previous to that?

A. Overtime had been paid for straight time, though
1721 there was a traveling time allowance in portions of the company.

Another thing that used up a considerable amount of time was a demand on the part of the construction-distribution department for a greater increase in pay, a considerably great increase in pay than had been requested in other departments; the basis for the demand being their contention that linemen were less well paid by the Virginia Electric & Power Company than they were by other companies in this general southeastern district.

I think those four or five things are the things that occupied more time each than any of the other individual things.

By Mr. HILTON:

Q. Now, in regard to the payment of overtime, it provides for time and a half for work done in emergency, and in emergency is quoted; is that correct?

A. That is correct, in the final agreement, as I recall it.

Q. In the final agreement. Now, did you have any discussion as to the definition of "in emergency"?

A. A good deal of it.

Q. Well, isn't that where the greatest difficulty came, in trying to come to an agreement as to what "in emergency" was?

A. There was a good deal of difficulty as to that, and there was a considerable amount of discussion before the representatives of the line department were willing to recede from their demand for traveling time and double time for work
1722 on unscheduled work.

Q. Now, in regard to the wages in the proposed agreement, the I. O. E. was asking for a blanket increase of 15 percent for hourly-rate employees, were they not?

A. No. I would have to check up to be sure this is right, but I think this is right. The wage proposals were different. The wage increases asked were different for each section, or each division, of the employees. No two were alike, as I recall it.

Q. As I understood your direct examination, you stated that the I. O. E. had dropped in their demands for increased wages from the time the proposed agreement had been submitted up to the time that you first had the meeting on July the 30th, 1937; is that correct?

A. No; that is incorrect.

Q. It is not correct?

A. What I tried to state was that when we finally, along late 10 o'clock or so Saturday night, had reached the point where we were in accord on everything, except the closed shop and the amount of the wage increase, at that time, as I recall it, the I. O. E. had dropped to a flat 15 percent demand, and the company had proposed a 10, 7½, and 5 percent, based on two 30-cents per hour steps for hourly employees with 5 percent on the excess, and two $50 per month steps for salaried employees.

Q. What did you finally agree on with respect to the
1723 hourly rates of pay?

A. The final agreement was 15 percent on the first 30-cents per hour, 10 percent on the next 30-cents per hour, and 5 percent on any excess over 60 cents.

Q. Was that discussed at the meeting of July 30th?

A. Which? Wages?

Q. Wages, yes.

A. I think we had started that discussion before July 30th, before we quit on July 30th. That was one of the first things that we encountered when the committees split up into subcommittees to negotiate subdivisions of the contract.

Q. Now, what was the purpose of splitting up the committees into subcommittees?

A. It was to expedite the negotiations.

Q. In regard to wages, I mean.

A. No. It was just to expedite the negotiations. As I stated a while ago, the contract as submitted was really four separate contracts tied together at the front part of it by a few general applicable clauses, and there were men in our committee and in the I. O. E. committee from each of those general subdivisions, and the committees split up. For instance, the management representatives who would negotiate the electric division, and the I. O. E. representatives who would negotiate the electric division—for the electric division, to negotiate that part of the
1724 contract dealing exclusively with the electric department.

The same thing was done for gas, for transportation, and for general office.

Q. Now, how long did this meeting last the first day?

A. Until just about midnight.

Q. Did you recess for dinner that night?

A. We did. I think again an hour.

Q. Did you discuss the closed shop agreement again on the first day?

A. No.

Q. When was the next time you discussed the closed shop agreement?

A. I think it was not discussed again until the evening of the following day; that is, at or just before 10 o'clock, when we had reached the point where we were in accord on everything except the two points, the closed shop and the amount of wage increase.

Q. And then did you discuss the closed shop and wages, say, after 10 o'clock the evening of the second day, which would be July the 31st?

A. What we did was to separate to see if either or both sides could work out any suggestions that might be accepted as a compromise to settle those two points; and then we came back together again and settled on the compromise that was finally incorporated in the contract.

Q. And did you reach an agreement the night of the
1725 second meeting in regard to the closed shop and to wages?

A. That is correct.

Q. And you discussed that from 10 o'clock in the evening until how late?

A. It was something like midnight when we left the second night.

Q. And that was the only other time you had discussed the closed shop, with the exception of the first time on the morning of the first meeting?

A. That is my recollection.

Q. So that the negotiations for this closed shop agreement, then, covered a period of approximately four hours?

A. I think less than four hours, because a part of the time, from 10 to 12, was taken up by discussion among the members of the company committee, and presumably discussion among the members of the I. O. E. committee, separate from one another.

1726 Q. And on the evening of the second day's negotiations were all of the members of the I. O. E. committee still in favor of a closed-shop agreement?

A. Do you mean before we split up?

Q. Yes.

A. So far as I know, they were.

Q. And were any members of your committee representing the company ready to yield a closed-shop agreement on the evening of the second day?

A. What we did, of course, was to separate; and Mr. Holtzclaw came into the discussion. I, as Chairman, I think told him I believed we could settle the contract or finish up the contract then that night if we were willing to concede the closed shop and make some slight further increase in the amount of increased wage that we had said we would pay.

Q. Was that satisfactory to Mr. Holtzclaw?

A. Not initially. I think he was quite definitely not satisfied with it initially, but after some considerable discussion he agreed to it.

Q. Did you discuss that matter with him in an effort to get him over to your side, that a closed shop should be entered into?

A. I did not attempt to influence him at all into the closed-shop agreement. I think I did state that on that basis I thought we could end the negotiations satisfactory, and if not

1727 on that basis I didn't know how much longer we might have to go or whether we could end the negotiations satisfactory.

Q. Was Mr. Holtzclaw anxious to end the negotiations and have an agreement with the I. O. E.?

A. That I can't tell you.

Q. I mean did he ever tell you that?

A. No.

Q. Did he take a great deal of interest in these negotiations?

A. I think he took a good deal.

Q. He was familiar with the terms of the proposed agreement, was he not?

A. They were discussed with him as opportunity offered all through the period of negotiations.

1728 Q. Did Mr. Holtzclaw give you any reasons as to why you should give in and have a closed-shop agreement?

A. No; I don't think he gave any reasons. What I sought to do was to lay before him as clearly as I could all of the facts as to the negotiations so that he would have the entire body of those

facts upon which to form his judgment as to which things should be done.

Q. Did he ask you for your opinion or advice with regard to the closed shop?

A. I think he undoubtedly did. Undoubtedly he asked me what I thought.

Q. What did you tell him?

A. I don't recall exactly. But my feeling was this, as I say, that the closed shop and with some increase in the amount of the wage increase a complete agreement could be reached; without it, while I wasn't sure complete agreement could not have been eventually reached, it might be a long, long period of negotiation, and perhaps it would not be finished at all.

Q. So you were in favor of the closed shop provided you could get everything? Isn't that it?

A. Not necessarily at all.

Q. I mean if you could close up the agreement in a satisfactory form then a closed shop was all right with you?

1729 A. So far as I was concerned, I was opposed, and still am opposed, to a closed shop—if you mean my own personal feelings. I do not believe in any closed-shop agreement.

1730 Q. Mr. Smith, you negotiated this agreement for approximately two days from, let us say, early in the morning until midnight each day?

A. From ten o'clock in the morning.

Q. You did not quit until midnight?

A. With about two hours off each day for eating purposes.

Q. Did you meet on the third day?

A. We met again on the third day, which was Sunday.

1731 Q. What was your purpose in meeting on the third day?

A. The purpose in meeting on the third day was to word the clauses in words acceptable to both committees to express the understandings that we had arrived at and to have those clauses typed up in the final agreement.

1733 Q. Was the closed-shop provision that was finally entered into and included in the final contract the same as the provision for a closed shop in the proposed agreement?

A. Not quite.

Q. Can you tell us what changes were made?

A. There was added to that at the company's suggestion a provision that membership in the I. O. E. would not constitute a bar to an employee's being a member of any other organization to which he might elect to belong. I don't know if that is the exact wording or not.

Q. Yes; that is it substantially. I was coming over to give it to you. But that is all right.

Did you consider that the provision added by the company in any way detracted from the closed-shop provision and the effect that the closed-shop provision would have upon the employees working for the Virginia Electric and Power Company?

A. It still left it completely a closed shop, of course. The only thing that it did was to indicate the company's attitude, which was that it did not want to interfere with any employee joining anything he might want to join.

Q. In other words, if he joined the I. O. E., he could join anything else he wanted to join, couldn't he?

A. Yes. His joining the I. O. E. made no difference.

Q. But he did have to join the I. O. E. in order to work
1734-1735 for the company?

A. That is correct; that is, beyond a certain date.

Q. Which was approximately 90 days after the agreement was signed?

A. Yes.

Q. And this provision that he had the right to join or remain or become a member of any labor organization had the same effect in regard to fraternal organizations, did it not, Mr. Smith?

A. It left him perfectly free, and it did set out in the agreement in so many words that he was perfectly free to join anything he wished to join.

Q. And the I. O. E. agreed to that, didn't they?

A. They did.

Q. You don't know whether or not under the constitution and bylaws a member of the I. O. E. could belong to some other labor organization?

A. I have no knowledge of that in the constitution and bylaws.

Q. During the negotiations were they heated or friendly throughout?

A. Well, at times they were somewhat heated; at other times they were friendly enough.

Q. Were they the most heated with respect to wages and the closed-shop agreement?

A. Wages, the closed shop, and the overtime feature
1736 brought forth some excitement.

Q. At any time in order to enforce their demands on the company did the I. O. E. threaten to call a strike if their demands were not met?

A. I don't recall that they did. I don't think they did.

1741 Q. Have any new demands or additional demands ever been presented to the company since the agreement was signed?

A. There have been individual requests for changes in wages from time to time during the life of the agreement. We did

receive, some little time ago, certain changes which the I. O. E. desired to incorporate into a new agreement to take the place of the one that was then in existence.

Q. When does this agreement expire, Mr Smith?

A. It expires, or was due to expire, on May 31st.

Q. May 31st of this year?

A. There is in it an automatic renewal clause.

Mr. HILTON. That is the first day of June in the agreement that I have. Is that right, Mr. Moore?

Mr. MOORE. That is right.

1742 The WITNESS. That would be it.

Trial Examiner FORT. Of what year?

The WITNESS. 1938.

Mr. HILTON. This has the first day of June 1937.

By Mr. HILTON:

Q. Now, have you had any negotiations in the last few months, say, with respect to changing any of the provisions of this agreement?

A. As I said, the I. O. E.——

Q. Other than you have related.

A. The I. O. E. submitted a list of the changes which they wished to make. We at the same time submitted a list of changes which we wished to make. We were to have had additional negotiations, but at or about that time we received notice of the filing of this complaint, and it was mutually agreed to drop the negotiations.

Q. So that negotiations had been started toward the new agreement, but due to the fact that we have had this hearing the negotiations were mutually called off; is that right?

A. The initial step——

Q. The initial step.

A. Was negotiated. Actual negotiation did stop.

1746 Q. When did you start your lay-offs?

A. We had reached the point where new lines to be built were not coming in, and we were apparently getting close to the time when a decrease in crews would be necessary.

Q. And did you order that the crews be decreased?

A. We not exactly ordered. We had a conference with the electric department men in Richmond, at which the fact that additional lines for construction were not coming in was discussed, and at the end of that discussion we requested each of those men to go back and canvass his own situation and see what, in the light of that canvass, the prospects were for additional construction and what he could do to trim his own department.

Q. Who would have the final say on trimming the crews in Norfolk?

A. How do you mean? As to how much?

1747 Q. As to how many and who would go.

A. The determination as to who would go here in Norfolk, I should think, would be made by Mr. Holik and Mr. Crafton. Mr. Throckmorton would O. K. it.

Q. He would O. K. the lay-offs and then send them to you?

A. They would come on up to Richmond for action up there in the accounting department, and undoubtedly would pass over my desk.

Q. And you would have to O. K. them before they would finally get off the pay roll; is that right?

A. I would initial them, too.

Q. But you would rely on the list that Mr. Throckmorton sent to you, and he, in turn, would probably rely on the list that Holik and Crafton submitted to him; is that right?

A. That is correct.

1749 Q. Well, showing you what is in evidence as respondent's exhibit 15, which shows the number of employees on the pay roll in the electric department in March 1938, you had 380 men.

A. A total.

Q. A total of 380 men?

A. Yes.

Q. And you cut that to 364 in April of 1938?

A. That is correct. That is the total for the electric department.

Q. The total?

A. Yes.

Q. Now, did you have any conferences with any representatives of the I. O. E. before you began these lay-offs?

A. I had none.

Q. What method did you use in determining the men who should be laid off?

A. I did not determine what men should be laid off.

Q. Well, does the company have any policy with respect to the men that are to be laid off when lay-offs occur?

A. The general policy of the company with respect to layoffs when they become necessary is that the man or men selecting the men to be laid off shall try to give consideration to every factor in connection with that man and his usefulness to the company in determining which one is to go.

1750 Q. Now, what is the first factor you consider—seniority, say, or ability?

A. The first factor, in my opinion, would be ability.

Q. Well, is that the policy of the company or just your personal opinion?

A. Yes; that is one of the very serious factors worthy of very serious consideration in the company's opinion.

Q. Now, say, a foreman is requested to let a man off, it would be his duty to first look for ability; is that correct?

A. He would look—well, I cannot give them to you in any specific order. He would look for ability of the man; he would consider the way he fitted into his crews and got along in his contacts; he would give consideration to the length of time the man had worked for the company; and he should consider what the man's obligations were, what he had to take care of, and so forth.

Q. You mean married or single?

A. Yes; dependents.

Q. So if you had two men who were of the same ability and who were both married, the one who was with the company the longest would be the one that would be kept; is that correct?

A. That is correct. All other things being equal, seniority would determine it.

Q. But if there were two men, and of the two men one was, say, a much better man than the second, even though the
1751 second man had seniority and was married he would be released, would he not?

A. I think he would be.

1758 Q. Have you ever heard of anyone being fired for referring to one of the foreman by his last name, but not in his presence?

A. I haven't heard of any cases of that kind.

Q. If you learned that somebody had called you "Smith" would you recommend that he be fired or would you fire him yourself?

A. I suspect most of them do call me just that. No; I would not.

Q. They call you "Smith"?

A. I suppose they do.

1764 By Mr. Latham:

Q. Can you explain why on October 28, 1937, there was a bulletin put out to the employees explaining to them that clause in the contract headed "Membership as a condition of employment"?

A. That was put out just prior to the expiration of the 90-day period during which any employees not then members had to become members. It was put out because the company was very anxious that all employees be fully informed that that clause was in there and that it was necessary for them to become members if they were to retain their jobs.

1765 Q. Did the company feel that there would be, perhaps, discrimination by the I. O. E. against some of the membership?

A. Discrimination against the membership?

Q. I don't mean the membership: I mean against the personnel of the company.

A. A discrimination by the I. O. E.?

Q. Yes.

A. I don't think the company had any particular thought as to whether the I. O. E. would or would not discriminate. All the company was seeking to do in that bulletin was to make sure that every employee was informed of the necessity of joining the I. O. E. if he were to remain an employee.

1771 By Mr. WHITE:

Q. And as the matter now stands, Mr. Smith, the present contract between the I. O. E. and the Virginia Electric & Power Company runs until June 1, 1939; is not that correct?

A. I believe that is correct. I am sure that there is a date set in the agreement. If there has not been notice to terminate prior to that date, the contract automatically renews itself. I think it has already done so.

Mr. MOORE: Today is May 31st.

The WITNESS: The notification date was prior to
1772 May 31st. So it is automatically renewed.

1783 By Trial Examiner FORT:

Q. As to the coal, have you any idea as to the percentage of coal purchased? I notice the stipulation says more than 51 percent. Do you know how much more than 51 percent?

A. Well, most of our coal comes from outside the State. As far as I know, it is mined outside of Virginia.

Q. There is a small amount that is mined in Virginia?

A. Yes.

Q. But the great bulk of your coal——

A. The great bulk of the coal comes from outside the State.

Q. "More than 51 percent" is just a convenient figure?

A. Yes.

Q. You mean you could safely say 90 percent?

A. I am not just sure what the percentage is. I am sure it is 90.

Q. I would assume so.

Now, these 346 railroad cars of oil that you have in the stipulation: Of course, the oil is not purchased in Virginia; it has to be brought into Virginia?

A. So far as I know there is no oil purchased in Virginia.

1784 I am sure it all came from outside.

1788 Q. Is that the normal way for Norfolk expenses to be handled?

A. For Norfolk expenses?

Q. Yes.

A. The bulk of the general bookkeeping is all done in Richmond.

1792 Q. You made a statement as to why these original meetings were held in which the arrangement was made for
1793 the representatives or emissaries to attend, and said there was a feeling of fear that the employees would be misled and that there would be some wrong action or the making of mistakes. Did I get you right on that?

A. I didn't intend to say it in just that way.

Q. I just made a note of it here. I made a note to ask what you meant by the employees being misled. That was something you said.

A. I don't remember what I said. The thought that I was trying to convey was this, that there was a fear among the executives of the company that the employees, by this newspaper publicity that was pouring onto them all of the time, would be disturbed and upset and perhaps come to the conclusion that it was necessary for them to join something or do something, whether they wanted to or not, or perhaps might be influenced into thinking that the company was dead set against their doing anything. And it was just an effort to make the position of the company clear and, so far as the executives could understand what their position was, make their position clear to them.

Q. How could you clear the thing up when you called them into a meeting and told them that you had no choice, that they could join or not join?

1794 A. We thought that would remove any thoughts from their minds that the company was going to interest itself in what they did or was going to take any steps of any sort, shape, or description if they decided to do anything, whatever they decided. We were just trying to get it across that so far as the company and the officials were concerned that they were perfectly free agents; and we wanted to be sure that they understood it.

Q. Why did you want them to know that they were perfectly free agents? What was your idea in that?

A. To erase any impression, if it did exist, that they were not free agents.

Q. What was your idea?

A. To erase any impression, if it did exist, that they were not free agents.

Q. That they had to join a union?

A. If they had the impression that they had to join we wanted to erase that; and if they had the impression that the company was antagonistic to their joining something they wanted to join, for instance.

Q. I don't see where you gave them anything. You didn't tell them anything. You left them exactly where you were. It looks to me like under that statement there would be as much confusion as there was before.

1795 A. To be perfectly frank with you, I don't think we did clarify it very much at this Norfolk meeting. I think it was still confused. But the thing we were trying to get across was that the company did not want to influence them either for or against anything they wanted to do; notwithstanding any impressions they might have in mind from newspaper articles, they were free agents.

Q. Were you being charged with trying to do something to them?

A. We had not been, so far as I know.

Q. Why did you suspect that they thought you were trying to do something?

A. It was purely because we thought this flood of newspaper stuff, or some of it, indicated somebody else thought that everybody had to join a union. There was a good deal of it tied into opposition to unions by other businesses, and so on.

Q. As I see it, all you could have accomplished or could have hoped to accomplish was to assure them that they did not have to join the union.

A. That they did not have to join and the company was not saying anything about it if they did choose to join, that the company was standing on the side line.

1798 Redirect examination by Mr. MOORE:

Q. Now, coming back to this April 26th bulletin and as to what was the message in that bulletin, in line with the questions by the Examiner, I call your attention to the second paragraph. Will you just read that, please?

A. (Reading.) "The company recognizes the right of every employee to join any union that he may wish to join, and such membership will not affect his position with the company."

Q. Now, that is the first sentence.

1799 A. Yes, sir.

Q. Was it the desire to make that perfectly clear to the employees, regardless of what they might have previously thought, if they had any thoughts on that subject?

A. It was.

Q. Now, will you please read the second sentence?

A. (Reading.) "On the other hand, we feel that it should be made equally clear to each employee that it is not at all necessary for him to join any labor organization, despite anything he may be told to the contrary."

Q. In other words, it is put both ways, isn't it?

A. It is.

Q. Then the last paragraph states if any employee or group of employees wants to discuss any matter with the company the officers will be glad to discuss it with him, does it not?

A. That is correct.

1800 Mr. SPENCER. Is that the April 12th bulletin?

Mr. MOORE. The April 26th bulletin.

Mr. SPENCER. That has been introduced in evidence as Board's Exhibit No. 3, the one that you are reading from?

Mr. MOORE. That is right.

By Mr. MOORE:

Q. In other words, there were three main points in that message, were there not?

A. That is correct.

Q. Now, was there contained in the newspapers about that time, and for some two weeks prior to that time, information which might have been confusing to employees, in comparison with those two statements?

A. My opinion was that there was much of that information that would create the impression that it was necessary to join something.

Q. I am referring to the two statements in the second paragraph.

A. Yes.

Q. Was that question about labor affiliation about the livest topic of the day at that time?

A. I think it was; yes.

1804 Q. Now, coming to these papers that were presented at the beginning of the negotiations on the morning of July 30th, which have been filed in evidence, consisting of a letter from Mr. White, dated July 27, 1937, and an exhibit attached to it entitled, "Membership Roll of Independent Organization of Employees of Virginia Electric & Power Company, compiled by voting sections in Norfolk and Richmond," and the constitution and bylaws, which were referred to in his letter, do you recall whether or not there were on the table, presented by Mr. White, the membership application cards representing the 2,429 members shown on this exhibit?

A. There were documents and other things on the table up at the other end, from where I was. I did not look at the contents of them, and I am not able to say definitely just what they were. They were some little distance removed from me, and I did not go up to look.

Q. You did have assurances that the matter had been
1805 checked up and had been satisfactorily checked up?

A. Yes.

Q. To establish whether or not the I. O. E. had been properly organized and was set up in such a way that, as an organization, it could properly represent its members that it claimed authority to represent; did you not?

A. We had assurances of that.

Q. From your own knowledge, if there were anything like 2,400 members, did you or not know whether that represented much more than the majority of the employees in the company below the grade of foreman?

A. It did represent much more than a majority.

Q. You knew the number to be approximately what?

A. The total employees were somewhere around 3,400, and the employees in nonsupervisory capacities would be 3,000 or less.

Q. You knew it to be that?

A. Yes, sir.

1816 Q. What did you mean when you said in respect of the contract of August 5, 1937, at the close of it, that you were not wholly happy about it and you didn't think the I. O. E. representatives were wholly happy about it?

A. I think I said I didn't know whether the I. O. E.
1817 representatives were or not. I wasn't fully happy about it because I have never been wholly happy about two provisions in it. One was the closed shop and the other one was the hours per week provision covering the general office employees. Those are my two pet objections.

Q. You know what "arms length" bargaining is, don't you?

A. I think so.

Q. Will you state whether or not there was, so far as you know and believe, complete "arms length" bargaining during those three days?

A. To me it seems to me that there was just as complete "arms length" bargaining as there could be.

1826 T. Norm'n Jones, Jr., a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MOORE:

Q. Will you please state your full name, Mr. Jones.

A. T. Norman Jones, Jr.

Q. Mr. Jones, are you vice president of the Virginia Electric & Power Company?

A. I am.

Q. For how many years have you been vice president of the company?

A. Since January 1, 1929.

1828 Q. Will you state for the record the date on which, during this period of your service, the ownership and management of the properties now known as the properties of the Virginia Electric & Power Company changed hands or were sold?

A. July 1, 1925.

Q. As the record indicates, the Engineers Public Service Company now owns substantially all of the common stock of the company, does it not?

A. That is correct.

Q. And on or about July 1, 1925, that company acquired the control of the company and changed the management, and since that time has been continuously in charge of the management of the company and its ownership, has it not?

1829 A. That is correct.

Trial Examiner FORT. That is the Engineers Service Company?

Mr. MOORE. That is the Engineers Public Service Company. In other words, the ownership of all of the common stock changed hands in 1925; that corporation purchased the stock of the company, and has continuously since that time owned it.

Trial Examiner FORT. Is that a Virginia corporation?

Mr. MOORE. No; it is not.

By Mr. MOORE:

Q. That was on or about July 1, 1925, was it not?

A. The Engineers Public Service Company acquired it on that date.

1832 Q. Are you very familiar with the bulletin which has been filed as Board's exhibit No. 3 [handing the document to the witness]?

A. I am.

Q. Did you collaborate with Mr. Holtzclaw or Mr. Smith in connection with the preparation of that bulletin?

A. I did.

1833 Q. You heard Mr. Smith's testimony, which lasted for the entire day yesterday, did you not?

A. I did.

Q. You remember that he was examined quite carefully in regard to the background for this bulletin of April 26th?

A. I do.

Q. Does your recollection agree with his testimony on yesterday, or does it differ in any respects as to the circumstances surrounding the preparation and posting of that bulletin?

A. I do not recall any material difference. I think in
1834 Mr. Smith's testimony yesterday he stated that at one of the meetings there were a certain number of individuals present, and he named them.

Q. I am talking now about the bulletin of April 26th.

A. No; I do not know of any material difference in the surrounding conditions.

Q. Now, do you recall that after that bulletin was posted, there came to your attention certain requests from employees for certain adjustments of wages and working conditions? I call your particular attention to a certain exhibit here. The first is Board exhibit No. 11-B, which refers to the request submitted to Mr. Cole from the Norfolk shop.

Do you recall receiving that petition or request some time between April 26th and May 20th [handing the exhibit to the witness]?

A. I think that came in about the middle of May.

Q. Now, the next exhibit that appears here is what is called a long petition, Board exhibit No. 12, from the Norfolk transportation employees, entitled "A Petition to the Officials of the Virginia Electric & Power Company," etc., signed by 190 employees of the transportation department. Do you recall receiving that petition in that interval shortly before May 20th [handing the exhibit to the witness]?

A. The original of that petition was sent to Richmond, and I recall seeing it about the middle of May.

1835 Q. Now, do you recall receiving any verbal requests from other sections of the company about that same time for certain wage adjustments or changes in working conditions?

A. Changes in working conditions in Richmond were requested, consisting of, I think, a longer period for lunch, and certain additional toilet facilities.

Q. Well, were both of those from the transportation department?

A. From the transportation department. I heard of some others that I was not directly familiar with.

Q. There were two of those that came from Richmond, as I understand it, in your immediate department.

A. That is correct.

Q. Now, you heard Mr. Smith's testimony yesterday in regard to the meeting that was called on May 20th for a conference by Mr. Holtzclaw with officers and department heads on that date. Do you know whether or not that conference was called as a result of the receipt of these several petitions and requests?

A. It was.

Q. Was there any cut and dried program determined upon in advance of that conference as to how those requests should be dealt with, or was the conference called for the purpose of advising and consulting with the departments heads to determine just what was the best thing to do?

1836 A. The conference was called in order that Mr. Holtzclaw might talk to the department heads and tell them the situation and consult with them.

1837 Q. Now, the result of the conference was what?

A. The department heads went back to their respective departments and brought to the attention of the men the fact that Mr. Holtzclaw was going to talk to the men in Richmond on May the 24th in the evening and in Norfolk on May the 25th, and he wanted to discuss with them the conditions that existed, and wanted the men to have such representatives as they saw fit come to the meeting or meetings.

Q. Well, now, was the suggestion that there be representatives sent to the meeting a matter of any order from the company or was the matter left entirely to the wishes of the employees as to whether they send anybody, and if so, who should go and how many should go?

A. The order was passed down to the men that these meetings were to be held by Mr. Holtzclaw, and that Mr. Holtzclaw wanted to talk to the men, and that it would be well, if they saw fit to do so, for them to send representatives, or emissaries, as they were termed yesterday, and to hear the talk to be given by Mr. Holtzclaw.

Q. Was the suggestion such as to include the idea that whoever went should be authorized on behalf of any other employee to do anything?

A. I did not so understand.

Mr. Hilton. I did not get the answer.

The Witness. I did not so understand.

1838 Q. Well, now, did you participate or collaborate in any way with Mr. Holtzclaw and Mr. Smith in the preparation of the speech, as it has been called, that was decided to be read at the meeting on May 24th?

A. I did.

Q. Do you identify this statement, which has been filed as Board Exhibit No. 4, as the speech in question?

A. I do.

1839 Q. Do you recall the circumstances which brought about the change in the time of having the Norfolk meeting from May 25th, as you had stated that it had first been determined it would be held, and changing it to May 24th?

A. I do.

Q. Now, will you just briefly explain that?

A. The meetings originally were both to be addressed by Mr. Holtzclaw, one on the 24th and the other one on the 25th. On the 24th, as I recall it, it was decided that inasmuch as the statement to be made by Mr. Holtzclaw in Richmond was the same as would be made in Norfolk, it would probably be wise to have the statement made in Norfolk at the same time as it was being made in Richmond. In that way there would be no likelihood of any misunderstanding arising by reason of any mis-quotation or mis-

1840 interpretation of what Mr. Holtzclaw said in Richmond being passed on to Norfolk.

Q. Have you for years had a rather delicate problem, from the standpoint of prestige, I call it, as between the Norfolk division and the Richmond division on matters where things would be done in one division first, perhaps, rather than in another?

A. Well, I would say there is some rivalry there between the two divisions, in the sense that, Richmond being a larger city, they look out to see if anything more is done for Richmond than is done for Norfolk.

Q. From the standpoint of the personnel, did that to some extent figure in that matter on this very point or was it different?

A. Well, I think it was mainly for the purpose I mentioned now, that the men at both ends of the company got the story at the same time.

Q. And avoiding any mis-understanding?

A. That is correct.

Q. Now, you heard Mr. Smith's testimony as to just what did occur at the Norfolk meeting, didn't you, yesterday?

A. I did.

Q. Now, in order to save time, I simply ask you whether or not your recollection of what did occur agrees entirely with Mr. Smith's statement as to what did occur or whether your

1841 recollection differs in any particular, and, if so, please state it.

A. I agree substantially with Mr. Smith's statement. I think he stated that some 25 or 30 questions were asked from the floor. My recollection is that the number was not quite so large as that.

Q. Were the questions in substance, however, regardless of the particular number, in substance as he described them?

A. I do not recall any—I listened to his testimony at the time, and I did not recall any material difference.

Q. Particularly on this question as to any statement in regard to whatever adjustment, if any, in wages, might be made as a result of these petitions and requests that had been filed dating from the 1st of next month, that is, June the 1st. Does your recollection check with his to the effect that no statement was made at the Norfolk meeting on that subject?

A. That is true.

Q. Had the point been discussed with Mr. Holtzclaw on Monday, May 24th, before you and Mr. Smith left Richmond?

A. It had been.

Q. And had anything been decided when he left Richmond as to whether some statement would be made on that point?

A. We did not know when we left Richmond that a statement would be made on that point.

Q. You do know that a statement would be made in Norfolk?

A. We had no authority to make any statement on that
1842 subject in Norfolk.

Q. Now, I ask you whether or not there had been any plan determined upon, or any scheme, for the increase of any wages of employees at that time.

A. There had been no plan determined on for any increase in wages.

Q. You did have before you these several requests for some adjustments, however?

A. We did.

Q. And no determination whatever had been made in regard to what would be the disposition of those requests, is that correct?

A. That is correct.

Q. Now, you and Mr. Smith returned to Richmond, as I understand it, that night, and did you the next day attend the meeting with superintendents and department heads in Richmond on the morning of May 25th, as he described?

A. That is the meeting that I referred to just now. I do not recall as many being present at that meeting as Mr. Smith said. I recall that there were some department heads, but just who they were I do not recall.

Q. They were the main department heads there?

A. Yes, the principal ones.

Q. Yes. You heard his testimony as to the instructions that were given at that meeting in regard to this matter of
1843 any effort on the part of anyone in the supervisory or management forces of the company to take any action or say

anything with a view to influencing the men on the subject of their labor affiliations, didn't you?

A. I did.

1844 Q. Does your recollection agree with Mr. Smith's testimony on that point?

A. Substantially.

Q. Did you attend the Norfolk meeting late that afternoon with Mr. Smith?

A. I did.

Q. You heard his testimony on that point, didn't you?

A. I did.

Q. Does your recollection as to the instructions given to the department heads and the principal assistants on the Norfolk-Portsmouth division agree with Mr. Smith's testimony on that point?

A. Substantially.

Q. Do you recall particularly whether Mr. Bishop was present at that Norfolk meeting on May 25th?

A. I believe he was. There were 15 to 18 present at that meeting.

Q. To the best of your knowledge and belief he was present, was he?

A. He was.

Q. Is there any doubt in your mind that Mr. Bishop did know that the instruction of the company was that there was to be no effort on the part of the company to influence the men on that subject?

A. There is no doubt in my mind.

1845 Q. After the May 25th meeting you recall Mr. Smith testified on yesterday that so far as he knew there was a period of complete quiet except for some newspaper stories and more or less random rumors so far as union activities throughout the properties were concerned. Does that check with your recollection?

A. I remember there were quite a number of rumors. A rumor of today would be offset by a more or less contrary rumor tomorrow. We heard of meetings being held, but so far as knowing what was going on was concerned I think we can very truthfully say that we were in the dark.

Q. What was the first information that came to your personal knowledge after the May 24th meeting in Norfolk as to any activity in the way of work or conferences and that sort of thing? After that meeting of May 24th with whom did you have contact first in connection with union activities down here?

A. Mr. Elliott. It was R. Elliott, Jr., I think. That was the first one I had contact with.

Q. On how many occasions did you have occasion to talk to Mr. Elliott during the period from May 24th prior to this hearing?

A. The only occasion I ever recall talking to Mr. Elliott was on June 14, 1937.

1846 Q. Did you know Mr. Elliott prior to that time?

A. I don't recall ever having met him prior to that time.

Q. Will you just state briefly the circumstances with respect to any talk that you had with Mr. Elliott on June 14, 1937? And first state, if you know positively, what was the date, and, if so, how you know it?

A. I know the date was June 14th because I made a note of it at the time, it being a rather unusual occurrence.

Q. And you noted it in your personal diary?

A. I did.

Q. What time of day was it when he saw you?

A. It was after dinner, and I guess it was about 2:30 or 3:00 o'clock, or maybe as late as 4 o'clock.

Q. Did he have any appointment with you?

A. No; he did not.

Q. Your office and Mr. Smith's office and Mr. Holtzclaw's office are connected with each other on the fourth floor of the company's building in Richmond, are they not?

A. That is right.

Q. How did it happen that you saw Mr. Elliott on that day?

A. I was advised by a secretary on that floor, a joint secretary, that Mr. Elliott was outside and that he had called to see Mr. Holtzclaw; and, Mr. Holtzclaw not being in the office,

1847 he wanted to see me.

Q. Outside of Mr. Holtzclaw, you were the top operating vice president of Mr. Elliott's department other than Mr. Smith, who had general supervision, were you not?

A. That is correct. I don't recall whether he had asked to see Mr. Smith or not. As I recall it, Mr. Smith was not in his office.

Q. Tell what happened in your own way.

A. Mr. Elliott was invited in. He introduced himself and told me that he represented, as I recall it, approximately 190 of the operators in Norfolk, and he had called to discuss the matter of bargaining or negotiating for that group with Mr. Holtzclaw, and, Mr. Holtzclaw being out, he wanted to talk to me about it.

Q. Did he have anyone with him?

A. No one came into the office with him. I don't know whether there was anybody outside or not.

Q. He said he individually and alone was authorized to represent that entire group, did he?

A. He said he was representing that group. I told Mr. Elliott that if he wanted to discuss bargaining on behalf of that group of men he would have to see Mr. Holtzclaw. Mr. Elliott stated
1848 that he had been advised that the National Labor Relations Board would probably require the company to deal with that group of men.

I told Mr. Elliot that I knew nothing about what the Labor Board might require. And I think I told him at the time that we had been advised by counsel that so far as the transportation department and gas department were concerned that they were not covered by the Wagner Act.

Mr. Elliott asked me if I knew whether Mr. Holtzclaw was going to be in his office the next morning. I told him that I was reasonably certain that he would be and that I would be glad to make an engagement with Mr. Holtzclaw to meet him in his office the next morning at ten o'clock if he wished me to do so. That was agreeable to Mr. Elliott, and I did so arrange.

Mr. Elliott advised me that he thought he would run up to Ashland to spend the night and would be back the next morning. I think it was then that he stated that he had attended Randolph-Macon College, which is located in Ashland, and that he had some friend or friends up there that he wanted to see, but that he would be back the next morning.

Q. Did you suggest to him or did you in any way endeavor to induce him to return to Norfolk?

A. I did not.

Q. Did you say anything whatsoever along that line?

A. I did not. It was a matter of indifference to me
1849 where he wanted to spend the night; but if he wanted to see Mr. Holtzclaw the next morning I would be glad to make an engagement for him.

Q. Did he present to you any credentials whatsoever as a basis for the statement that he was there without any appointment with you for the purpose of discussing some bargaining on behalf of the transportation employees in Norfolk?

A. I don't recall that he said anything about credentials.

Q. Or any authority of any kind? Did he present any authority?

A. I don't recall any.

Q. Did he suggest any?

A. He told me, as I said before, that he was there to represent this group of men who had signed the petition.

Q. Did you understand that there was in existence any paper of any kind with reference to that subject that we was talking about other than the petition signed by the 190 men which has been filed here as Board's Exhibit No. 12? Did you understand

that there was any paper in existence, any other paper in existence than that petition at the time Mr. Elliott was talking to you? Did you know of any other paper relating to that subject?

A. I don' remember whether Mr. Elliott said anything at that time or at any time—and that was the only time I talked to him—about having any special authority for any period of
1850 time. I do recall hearing that there was some arrangement would be that group of men or some other group of men, about giving them 30 days in which to see what he could do.
1851 Q. However, did he say anything about that in his talk with you?

A. Well, I don't recall whether he did or not.

Q. You heard his testimony, did you not?

A. I did.

Q. I will ask you whether or not you said anything whatsoever about a job or in any way hinted or insinuated anything about a job in that conference?

A. I did not. The thought never entered my head.

Q. Did you say anyth' g to him whatsoever with regard to the quality or the nature of his work with the company?

A. I don't recall any remark of any kind being made on that subject.

Q. And you say you did not even know the man up to that time?

A. I don't recall ever having seen him before that date. Right at this point I would like to take this opportunity to say that nothing that I said and nothing in my mind, had he been a mind reader, could have been construed as a reflection on the men operating our cars and buses or those in any other department of the company.

He made the statement, as I recall it, that I insinuated that they were riffraff. That is not true.
1854 Q. You heard Mr. Elliott's testimony as to the conclusion he reached in his own mind about a statement you made about himself in comparison with other employees of the company; did you not?

A. Will you repeat that question?

Trial Examiner FORT. Read the question.

(The reporter thereupon read the pending question, as above recorded.)

By Mr. MOORE:

Q. Where he said that you made some remark about his being a college man, et cetera. Do you remember that?

A. Yes, sir.

Q. Now, I ask you, did you make any statement to him about his services along that line or the nature of his services?

A. As to his being a college man?

Q. About his being better educated, etc., than the rank and file of employees, and based upon which he says he drew the conclusion that he thought you considered that the other men were riffraff in comparison to him.

A. I made no statement which, in my opinion, would, in the slightest degree, justify any comparison.

Q. Did you discuss it with him at all?

A. I do not remember the slightest discussion, other than he said he went to Randolph-Macon College, and he expected to go to Ashland and spend the night.

1855 Q. You have heard Mr. Smith's testimony as to the three-day conference covering the negotiations, July 30th, July 31st, and August 1st, have you not?

A. I have.

Q. Do you recall that he testified that on the morning of
1856 the first day, the two committees, of which you were a member of one continued its sessions throughout the forenoon of the first day and for some time after lunch, and then they broke up into sections, four sections; one, the transportation section, of which you were in charge on behalf of the management; Mr. Throckmorton as chairman of the subsection representing the gas department; Mr. Smith, representing the electric department, Mr. P. R. Williams, the accounting and sales; is that correct?

A. It is.

Q. Now, does your recollection of the facts that occurred during those three days of negotiations, as stated by Mr. Smith check and agree with Mr. Smith's testimony, or does it differ in any particular?

A. In so far as we were together at the meetings, my recollection is substantially the same as his. Part of the time I was in session with the transportation representatives in one office, and Mr. Smith was in another, or, I believe, it was in the board room.

Q. In other words, the four sections, really, were in different rooms, were they not?

A. I know that there was a session in the board room and one in my office. I do not know where the other two were held.

Q. Now, will you state briefly the facts within your knowledge as to the part that you took in conducting
1857 negotiations for your section, and in answering the question you may use any memorandum that you have yourself prepared. Have you such a memorandum?

A. Yes.

1858 Q. Is that memorandum a memorandum that you yourself prepared covering your recollections of the part that you performed in the negotiations?

A. I was asked to prepare a memorandum from my recollection concerning the negotiations. Before preparing the memorandum I refreshed my memory, and finally produced this memorandum, which is my own work.

Mr. Moore. We will now file this as respondent's exhibit.

Mr. Hilton. Mr. Examiner, at this time I also want to interpose the same objection that I interposed yesterday, and my only purpose in suggesting that that should go in as an exhibit yesterday was the fact that Mr. Moore was going to ask the witness to read it into the record, and for the purpose of
1859 keeping down the record, I suggested that it go in as an exhibit, of course, without admitting that it carried any weight as evidence.

Trial Examiner Fort. That will be accepted on the same basis as the one yesterday.

Mr. Moore. Yes, sir.

(The document above referred to was marked "Respondent's Exhibit No. 16" and was received in evidence.)

1864 By Mr. Moore:

Q. Now, in comparison with other sections of the company, the electric, gas, and accounting sales, there is a different set-up there, that is, the seniority in the transportation than what there is in the others, isn't there?

A. Seniority means something different in transportation from what it means in other departments.

Q. At any rate, after a great deal of discussion, is it not true that the company agreed to the method of seniority even though it varied in the two divisions, was not unanimous and was different in other departments? It was agreed to to satisfy the men?

A. We finally reduced it to writing in the form in which it was satisfactory.

Q. Now, was there a great deal of discussion on the subject of wages?

A. There was discussion on the subject of wages, but the wage matter was held off until the last, primarily because it was my feeling that whatever was done would have to be done generally affecting the employees as a whole and not affecting one particular group.

1865 Q. Had there been any provision ever in effect in the company in the transportation department, so far as you know, providing for time and a half for overtime in the transportation department prior to this time?

A. I do not recall that we ever had a provision of that kind.

Q. That was one of the high points that was discussed, wasn't it?

A. Time and a half, increase in wages, and so forth.

Q. Yes.

A. Another matter that was discussed quite fully was the matter of the number of hours constituting a day's work, a week's work, when overtime should begin, and the number of hours in two-part and three-part runs would have to be developed. That was a matter that we discussed for quite a length of time.

Q. Generally speaking, were the hours shortened to some extent?

A. Well, the representatives—if you will let me go into the story a little more fully——

Q. Yes.

A. The representatives of the I. O. E. realized that the length of runs, the number of two-part runs and three-part runs was a matter very largely determined not by our wishes in the
1866 matter, but by the public's demand for service. We operate on our railways in both Richmond and Norfolk, almost but not quite as many extras as we do base cars, and in the case of Richmond busses, as I recall, we operate more extra busses than we do regular busses, but not quite as many extra busses as regular busses in Norfolk.

Q. Now, Mr. Jones, were the representatives of the transportation department in those negotiations conducted in a serious and arm's-length manner or not?

A. They were conducted in a very serious and arm's-length manner.

Q. Did you consider that the two representatives from the transportation department, Mr. Wash and Mr. Hough, were able and shrewd representatives in the way in which they conducted themselves?

A. I did. They seemed to be very thoroughly posted on the situation, and as to what the men wanted they were very explicit.

1878 Q. Mr. Jones, some inquiry has been made in that proceeding by counsel for the Board with respect to the work of a man named Walters. Will you state what, if anything, you know as to any work done by Mr. Walters for the Railway Audit Company in which the Power Company was interested after July 1, 1935?

A. 1935?

Q. Yes; July 1, 1935.

A. The only thing I recall hearing anything about was, I believe, in March 1937. The report was received from this man

to the effect that someone was planning to organize the men at the Reeves Avenue Power Station. I don't recall that any other report was made by him on that matter. My recollection is that he was sick then and then became steadily sicker and finally went to bed, and I heard that he died, I believe, some time in the late spring.

1879 Q. Did anything come of this report in March?

A. Nothing that I know of. That is all that I heard about it.

1880 Q. With the exception of this report which you said he sent in about some organizer being in Norfolk contemplating organizing the men at Reeves Avenue in March, 1937, was there any period during the whole time, so far as you know, when he made any report as to any labor activity?

A. I mention earlier that I had heard some time in the winter of 1933 and 1934, I think it was, that he made some report; but I am not familiar with the details of it.

Q. Did anything ever come of that?

A. Not that I know of.

1883 Q. Now, Mr. Jones, some reference has been made to the V. E. & P. Co. YMCA at 18th Street, here in Norfolk. Without going into a great deal of detail, will you just state how long that organization has been functioning, and, briefly, what is its function?

A. When I came to Norfolk on January 1, 1917, I came here from Richmond where we had a "Y," which had orig-

1884 inally been established there by Miss Helen Gould. I found that in Norfolk they had no recreation facilities or rooms, and we arranged to lease a building across the street from our shops and barns and dispatcher's office, and also made arrangements with the international YMCA to use the name "YMCA", just as we were using it in Richmond.

We took the building, and I found among the men a man who spoke the language of the men and who impressed me as being a very fine type man in Mr. W. W. Williford, and he was appointed as secretary of the YMCA of the Virginia Electric & Power Company, in which capacity he has functioned since his appointment.

I think it was Mr. Roper, representing the international YMCA, with whom I made the arrangement, and while the State YMCA head, Mr. Lichty, I think, visits the local YMCA, and Mr. Williford occasionally, it is run without any great formality by Mr. Williford, and I do not recall there have been many occasions for any discussion with Mr. Williford about the way it was being run. The only matter that I recall that we did discuss was the matter of cost. We have approximately 500

members of the YMCA, as I recall it, which would mean, with each man paying 25 cents dues, $125 a month revenue from all sources. I think the total overall cost is somewhere in the neighborhood of $350 to $400.

Q. A month?

1885 A. A month, and that difference is made up by the Virginia Electric & Power Company.

Q. The formation of the YMCA dates back to what year?

A. I think it was along in the early fall of 1917, in September or something like that.

Q. It was somewhat your charge, was it not?

A. It was.

Q. And it is definitely a part of the general YMCA activities, tying in with Mr. Lichty, who is the head of the State YMCA of the State of Virginia; is that true?

A. We make reports to Mr. Lichty. At one time I think they were made to the international association, and then it was changed so that the reports might be made to Mr. Lichty instead.

Q. Do the employees contribute monthly toward the expenses of the YMCA?

A. Those who are members pay 25 cents a month.

Q. Does the management of the company undertake to control, through Mr. Williford or in any other way, the holding of meetings or activities that are carried on there in the YMCA, provided they are reasonably orderly?

A. I never heard of the exercise of any such control. Mr. Williford arranges the meetings when he wants them, on his own. The only tie, if it might be called that, between Mr.

1886 Williford and Mr. Bishop is in the fact that, I think, Mr. Bishop almost, if not always, sends all the new men to see Mr. Williford. Mr. Williford more or less adopts them. He tries to find suitable homes for the younger men, particularly coming from the company districts, and be generally helpful to them in getting located in Norfolk. I think they apply to him very freely concerning their personal affairs, and I think he visits them when they are sick and keeps in touch with them along those lines.

Q. The activities of the YMCA there are entirely social, religious, and of a general welfare nature?

A. Entirely so.

1887 Cross-examination By Mr. HILTON:

Q. Now, during 1922, Mr. Jones, did you have any strike among the street car operators of the company?

A. We did.

Q. When was that strike called, if you remember?

A. When?

Q. When.

1894 A. The 16th of January, 1922.

Q. And how long did it last?

A. I can tell you very definitely that in Norfolk it was around the 24th of January, because I had been physically ailing and planning a trip to the hospital, and I was only able to get to the hospital on the 24th. We had at that time most of the cars running in the City of Norfolk. In Portsmouth it was not true, and it was not true likewise in Richmond. However, I am not so familiar with the details in Richmond.

Q. That was ended on January 24, 1922; was it not?

A. We had the principal lines operating reasonably fully.

Q. I mean it was the same year, January 24, 1922?

A. That is right.

Q. You stated that you also had a strike among the street car operators at Richmond and Portsmouth.

A. That is right. I think they were likewise out in Petersburg. I am not so familiar with the conditions there.

Q. Did any labor organization call that strike?

A. We had a contract with the Amalgamated Association of Street, Electric Railway Employees of America—I think that was the name of it—and there were four locals, as I recall it. That contract was made with them.

Q. Did you have a contract before the strike was called or after the strike was called?

1894-A A. The contract was entered into in October of 1920, as I recall it.

By Mr. MOORE:

Q. Just state what the four locals were for the record.

A. I cannot give you the numbers.

Q. Not the numbers, but where were they located?

A. Richmond, Petersburg, Portsmouth, and Norfolk, as I recall it, were the four locations.

Q. Yes.

By Mr. HILTON:

Q. And how long did that agreement extend that was entered into in October of 1920, I believe you stated.

A. I think it was for a period of one year, and it was automatically—it had a feature in it that automatically extended it for another year, is my recollection.

Q. And why was the strike called in January of 1922?

A. My recollection is that the company was not willing to continue the wage rates that were in effect in that contract. I may be mistaken about that. It is a long time to go back; but I think that is correct.

Q. I understand it is a long time, but in any event, this strike was called.

Mr. Moore: At the expiration of the contract.

By Mr. Hilton:

Q. At the expiration of the contract?

A. Well, the contract would, normally, expire, on a one year basis, in October of 1921; but I think there was some negotiation or something of the kind that kept it running, so that it actually did materialize on the 16th of January 1922.

Q. Now, do you recall whether or not that contract provided that it could be terminated by either party at the expiration of one year upon 30 days' notice in writing?

A. I think there was such a provision, but I am not sure.

Q. And do you recall whether or not the Virginia Railway and Electric Company at that time——

Mr. Moore: Railway & Power Company.

By Mr. Hilton:

Q. Railway & Power Company gave notice at that time that it would terminate the agreement?

A. That is my recollection, that such notice was given.

Q. And when the strike was called did your transportation system at that time cease to operate on January the 16th 1922?

A. I think it ceased a hundred per cent in Portsmouth, and certainly a very large percentage in Norfolk. I do not think there were very many men left who came in to operate on that day. I can not tell you exactly how it worked out in Richmond and Petersburg, but I think substantially the same situation existed there as far as operators were concerned.

Q. How was the strike finally settled?

Mr. Hilton: I will withdraw that question.

Mr. Moore: I think inasmuch as you have asked it, it should be answered.

Mr. Hilton: All right. It is just out of place at this time; that is all.

The Witness: The strike was finally settled when we had a sufficient number of men to man the cars.

By Mr. Hilton:

Q. Now, during the period that the strike was on did you have the State militia out?

A. As far as Norfolk and Portsmouth are concerned, I recall no force of that kind at all. I do not know whether they were

ever used in Richmond, but I do not recall of their having been used in Richmond.

Q. Would you deny that the State militia was called out in Portsmouth and Norfolk during the strike?

A. All I can say is I do not remember that they were.

Q. You would not be in a position to affirm or deny?

A. I saw no evidence of it. I can only speak authoritatively up until the 24th of January, when I went into the hospital.

Q. Now, when the strike was settled, I believe you stated it was when you had a sufficient number of men to operate the street cars; is that correct?

A. That is right.

Q. Now did you bring in any strike breakers?

A. We did.

Q. Where did you get the strike breakers?

1899 A. I think they came from one of the subsidiary companies of the Railway Audit. I have forgotten the name of the company, but it was through the Railway Audit that they were furnished.

Q. Well, did you engage the services of the Railway Audit & Inspection Company during the strike of 1922?

A. We got these men from them.

Q. And you knew at that time that the Railway Audit & Inspection Company was engaged in the business of breaking strikes, did you not?

A. That is why we got the men from them.

Q. Do you know approximately how many strike breakers the R. A. & I. furnished in 1922?

A. As I say, I think it was through a subsidiary that we got them, but our order was placed directly with the Railway Audit, and as I recall the number, I think it was—we asked for a hundred, and I think about 90 came in.

Q. And do you know where these men came from?

A. They came via Cape Charles. Now, where they got the men I do not know.

Q. I am not trying to pin you down to where the men came from, but do you know whether or not they came from Pennsylvania or New Jersey or New York?

A. I am under the impression that most of them came from around Philadelphia and Baltimore.

1909 Q. I believe you stated that the Railway Audit and Inspection Company was furnishing services for the company, let us say, from 1933 until at least 1937, some time in March or April 1937. Is that correct?

A. That is correct.

Q. During that time a special operative was assigned to the Virginia Electric and Power Company? Is that correct?

A. That is correct.

Q. And that man's name was Walters? Is that correct?

A. That is correct.

Q. Did you know Mr. Walters personally?

A. No; I never met him.

Q. You never met him?

A. No.

Q. Did Mr. Walters ever report to your office his activities in connection with Railway Audit and Inspection Company?

A. He never reported to my office. I saw the man twice. I had him pointed out to me. I never had occasion to speak to him and he never made any report to me.

Q. Do you know whether or not Mr. Walters was carried on the pay roll of the Virginia Electric and Power Company?

A. He was engaged through the Railway Audit and Inspection Company and they were paid for his services.

Q. In other words, you did not carry Mr. Walters on any
1910 Virginia Electric and Power Company pay roll?

A. We did not. To the best of my knowledge and belief he was never carried on the company's pay roll.

Q. How much did the company pay the Railway Audit and Inspection Company for the services Mr. Walters was rendering the company?

A. As I recall it, it was $8.00 a day plus expenses.

1912 Q. Did you have anything to do with the employment of Mr. Walters by the V. E. & P. Company?

A. I expect I authorized his employment.

Q. Did you have to give any reasons for wanting Walters to be employed or for the type of service that Walters was doing or was to render?

A. We wanted a man here who could give us all of the information that we could gather. At the time we employed him in connection with jitney operations, we had a very severe competition with all kinds of jitneys, some run by individuals
1913 and some by small companies, and we wanted all of the information on that subject that we could get, as we were trying to develop a coordinated system of railway and bus operations in Norfolk.

Q. Just what kind of services did he render to the company on the jitney question?

A. He advised us regarding the ownership of the various buses; he gave us information concerning the operations of the buses and the attitude not only of the operators but of the people toward the bus operations generally.

Q. During the course of his investigation of the jitneys did he contact any of the City officials?

A. I don't know.

Q. Was he ever authorized by the company during that time to contact any of the city officials?

A. So far as I know, he was never authorized to contact any particular individual but to contact any individuals that he could get any information out of that he thought would be of interest to the company.

1914 Q. Were the services that Walters rendered during that period helpful to the company in eliminating that jitney competition?

A. They were very helpful in informing the company as to just what was going on in that field. In addition to the particular operation that you have asked about there was considerable rerouting of the rail lines and the substitution of bus lines and the operation of bus lines in some new territory, in connection with an arrangement for a coordinated system of bus and rail operations. And he was very helpful in reporting upon the conditions in those territories.

1920 Cross-examination by Mr. HILTON:

Q. I believe you stated that it was Walters' duty to report on anything that might be of interest to the company?

A. That is right.

Q. And under that term of matter of interest to the company, of course, you would include any labor organization activities among the employees of the V. E. & P. Company, would you not?

A. I would.

1931 Q. Now, Mr. Jones, you knew exactly what Walters' duties were in connection with the V. E. & P. Co. service that he was rendering, did you not?

A. I knew what they had been at the time he was engaged, and I know of no change in those instructions.

Q. And up to March 1937—as late as March 1937—he reported the fact that an organizer was going to organize the employees at the Reeves Avenue power station; is not

1932 that correct?

A. My recollection is that he made that report. We got similar service, of course, I think about that time, through the engineer at the powerhouse, who had been interviewed by this man.

1938 Q. There is one more question in regard to the R. A. & I. Did you discuss the reports and information that you had received in regard to the organization activities in March of

1937 at the Reeves Avenue plant with any of the officials of the company other than Mr. Holtzclaw?

A. Mr. Hilton, I have a very uncertain recollection of
1939 that particular event. It may be that I have confused the visit that was paid to the power plant by Mr. Parker with a report from Mr. Walters. As I previously stated, reports do not come to me. All I get is an occasional note when anything is considered worth commenting on.

We knew here of that visit from Mr. Parker to the Reeves Avenue plant, and I am just uncertain to the extent that I do not wish to swear to the fact that it came from Mr. Walters at all. I am not certain of it. I think you can get definite information of that from Mr. Throckmorton or Mr. Carroll or Mr. Bishop.

1942 Q. Then, after you posted this bulletin, Board Exhibit 3, you received certain petitions from the transportation department in Norfolk, did you not?

A. After April 26th?

Q. That is right.

A. Yes, sir.

1943 Q. And the petition, I believe, you have identified.

A. With the 190 signatures?

Q. With the 190 signatures, which is in evidence as Board Exhibit 12.

A. Well, what do you want me to say? Did I see it or know about it, or what? Identify it?

Q. Well, I will show you this petition, which is in evidence as Board Exhibit 12, and ask you if you received a petition similar to that, or the original of the photostat which I have, after you posted the notice on April 26, 1937.

A. My recollection is that it came in about the middle of May.

Q. How did you receive that petition?

A. I thing it was sent up from Norfolk by Mr. Carroll.

1944 Q. Do you know if any action was ever taken by the management of the Virginia Electric and Power Company with respect to the petition, Board Exhibit No. 12?

A. By the word "action" you mean whether the company decided that it would or would not grant the request?

1945 Q. That is right.

A. No action was taken on that subject.

Q. Did you ever meet with anyone representing the 190 men whose names were signed to this petition?

A. The only man I recall meeting as being the representative of that group was Mr. Elliott.

Q. And I believe that was on the occasion of June 14th, 1937?

A. Yes.

Q. Did you ever discuss any conditions of employment such as wages, rates of pay, hours, and general conditions of employment with anyone representing the men who signed this petition, which is Board Exhibit No. 12?

A. Will you repeat the question?

Q. Did you ever discuss any conditions of employment such as wages, rates of pay, hours, and general conditions of employment with anyone representing the men who signed this petition which is Board Exhibit No. 12?

A. No.

Q. In your bulletin of April 26, 1937, which is Board's Exhibit No. 3, you told the men that they had a right to form or to join any organization of their own choosing, did you not?

A. That is right.

Q. Then, when you received the petition approximately the middle of May 1937, you took no action on it, did you? And by action I mean what we just discussed?

A. That is right.

1946 Q. Can you offer any explanation or any reason why after posting Board's Exhibit No. 3 and receiving this petition, which is Board's Exhibit No. 12, Mr. Jones, you took no action on it?

A. Out of an abundance of experience on this property dating back to the time when the Norfolk property and the Richmond property were merged, it has been very evident that whatever is done in one place, as, for instance, in Richmond, had to be done in the other, in Norfolk, or vice versa.

By Mr. MOORE:

Q. You mean in the transportation end?

A. Yes; I mean in the transportation end. When they were merged in 1911, I think it was, there was a wage differential between the Norfolk and Richmond ends of the property, and it caused us so much complaint among the men both on the cars and in the shops that they were finally made the same; that is, the same on the cars and as nearly the same on the shop as it was practicable to do where there were a number of different men working on different types of work. Having in mind that thought, to me it would have been a very unwise thing to have bargained with one small group of men representing one end of the property.

Q. You mean the small group of men, approximately 190 men, in the Norfolk Transportation Division? Is that correct?

A. That is correct.

Q. In other words you wanted to deal with the entire transportation system, didn't you?

1947 A. I would deem that it would be much wiser to deal with the transportation men as a whole than to deal with one section, then have to deal with another section, and then probably have over sections coming along.

Q. In other words, you considered Petersburg, Richmond, and Norfolk and Portsmouth, so far as transportation is concerned, as one unit?

A. I considered that if we were going to bargain with the men that it would be a much wiser thing to bargain with those groups that were logically related rather than to bargain with those on one end of the property and then those on some other end of the property. It would not be, as Mr. Holtzclaw expressed it, very orderly procedure to bargain with a number of groups.

Q. Had you and Mr. Holtzclaw discussed that shortly after you received the petition which is Board's Exhibit No. 12?

A. I don't recall any direct discussion on that matter. I have no doubt we did talk about it, but I have no recollection of any such conversation because, as I said before, we were in conference a number of times every day and talking about conditions throughout the property and everything affecting the company.

Q. Did you ever tell any of the employees or any employee representing the men whose names appear on the petition which is Board's Exhibit No. 12 that you did not want to talk
1948 to that particular group with respect to general working conditions?

A. I did not.

Q. Do you know if anyone on behalf of the management ever did notify them to that extent?

A. Mr. Elliott discussed that matter with Mr. Holtzclaw the next day. I suppose Mr. Holtzclaw gave him some answer to it.

Q. At the time you talked to Mr. Elliott on the 14th day of June 1937, did you tell him that?

A. Did I tell him what?

Q. That the men should present a petition or form an organization on a system-wide basis?

A. I did not.

Q. Just a minute, please. Did you tell him that the men should present a petition or form an organization on a system-wide basis so far as transportation is concerned?

A. I did not.

Q. You did not do that?

A. I did not.

Q. When you posted your bulletin of April 26th, which is Board's Exhibit No. 3, you had in mind this orderly procedure that Mr. Holtzclaw testified to, didn't you?

A. I think that bulletin was designed more to give the men informative help than anything else. I think likewise it was somewhat of a surprise to some of us, and right much of a surprise to others that there should be apparently a number
1949 of cases of group interested at that time in doing something definite.

Mr. HILTON. May I ask the Reporter to please read back that question and answer?

(The question and answer were then read by the Reporter.)

1950 By Mr. HILTON:

Q. Do you mean, Mr. Jones, that you put out the bulletin just for the purpose of information and advising the employees of their rights under the National Labor Relations Act?

A. That is right.

Q. Then, when a certain group of employees did present a petition to the company, the company then did not act upon that petition?

A. It did not act on that petition.

Q. And were you surprised when you received this petition, which is Board's Exhibit No. 12, coming from one group in Norfolk, which was the transportation group?

A. I was surprised that we had a group of men who felt as a group that they were not getting the wages to which they were entitled.

Q. In other words, you were surprised they made any attempt at collective bargaining?

A. No; I was not surprised that they should make the attempt. But it was apparent to me that if we were to deal with a group here and a group there that we would get back into the same position that we were in at the time of the merger in 1911, as I recall it.

Q. And the only way you could get away from that would be to have a system-wide union in each department?

A. Well, the only way we could get around it would be for either the transportation department as a whole and the
1951 gas department as a whole and the electric department as a whole to organize separately or to have one organization.

Q. That is exactly what I said. Treating them as separate departments, let us say, you wanted to have the transportation department, if they were going to organize at all, to be organized as one unit?

A. Well, it was not a question of the transportation department organizing alone. If the employees as a whole wished to organize, they would accomplish just what has been accom-

plished by having the equivalent of about four contracts in one.

Q. In other words, you didn't just want the transportation department organized but you wanted all of the departments organized or none of them organized? Isn't that it?

A. No. I didn't say that.

Q. I am asking you that question.

A. The men as a whole, if they preferred to organize, that was satisfactory. If the men in the transportation department as a whole had said that they wanted to organize and did not want to be affiliated with any other group, I think it would have worked out very satisfactorily.

Q. Then, in other words, if all the bus and street car operators wanted to organize in a system-wide union that was all right with the company? That would be orderly procedure, would it not?

1952 A. I would say if the bus operators and the car operators and those in the maintenance-of-way department and the shops had organized as one group, that would have been a form of orderly procedure.

Q. And had that method of dealing with each department of the Virginia Electric & Power Company been discussed by yourself with other officials of the company?

A. I don't recall that it had been.

Q. Was there anything said or done by Mr. Holtzclaw which led you to believe that he wanted a system-wide organization for each department?

A. I don't recall hearing him make that statement or one comparable to it.

Q. He had been discussing orderly procedure with respect to collective bargaining with you, had he not?

A. We had discussed the bulletin in which that appears.

Q. And you also discussed the petition which is Board's Exhibit No. 12?

A. That is right.

Q. And didn't Mr. Holtzclaw tell you that he did not want a petition similar to Board's exhibit No. 12 coming in from Norfolk, Petersburg, Richmond, and Portmouth; that that was not an orderly way to handle it?

A. I don't recall that Mr. Holtzclaw told me anything about it in that sense. There was a discussion of the petitions.

1953 and it was quite obvious that if each group of men on the property or if a large number of groups of men wanted to be dealt with separately that we would have a confused situation.

1954 Q. It would make it very difficult for the company to deal with such groups, would it not?

A. It would be very unsatisfactory.

Q. And not only dealing with particular groups, but also dealing with particular crafts in the groups?

A. Do you want me to answer that?

Q. Yes.

A. Well, I think it would have been very generally unsatisfactory.

Q. So, then, on May 20th, there was a meeting of the operating officials in Richmond?

A. That is correct.

Q. And at that time, I believe it was decided to have Mr. Holtzclaw address the representatives of the employees of the V. E. & P. Co.?

A. That is right—on the 24th at Richmond, and on the 25th in Norfolk.

Q. Now, at this meeting of May 20th, 1937, was the petition, Board's Exhibit No. 12, discussed?

A. My recollection is that that petition was referred to, as well as the one that came from the shops that I mentioned just now, and I think one or two verbal requests.

Q. What was the discussion with respect to these petitions, both oral and written, at this meeting of the 20th of May?

A. Well, the substance, I think, would be that the
1955 petitions coming in evidenced the fact that some of the men were interested in a change in their working conditions and wages, which indicated that it would be well to have them all advised that Mr. Holtzclaw would like to talk to them about the Wagner act and their rights under the act, to the end that if they were interested in organizing in any manner that they saw fit, to discuss their wages and working conditions, they could make that approach, and if they were not interested, they did not have to.

Q. In any event, it was later decided to reduce the speech to writing and have Mr. Holtzclaw read it?

A. It was decided to reduce it to writing, and Mr. Holtzclaw read it in Richmond.

Q. And that was to tell the employees that they could organize if they saw fit; is that correct?

A. That they had that right.

Q. And now, you had already issued a bulletin on April 26, 1937, advising them that they had the right to organize. Why was it necessary to have the president of the company address the representatives of the employees and again explain that to them?

A. Well, there seemed to be no evidence of what I might term an appreciation of the need for the orderly procedure which the

company deemed desirable, and it was thought that such a talk by Mr. Holtzclaw, making clear their rights and
1956 privileges, would enable them to determine whether or not they wanted to perfect an organization to discuss the matter with the company, or whether they wanted to go along as they were going, or do whatever they pleased to do.

Q. Now, you had already been advised by this petition, Board's Exhibit No. 12, that at least the transportation employees in Norfolk were interested in organization?

A. That is true.

Q. Well, why was it necessary to again address the representatives of those employees and tell them that they could form a union?

A. To advise them that groups of the men had indicated an interest, but that to proceed to handle small groups would not be a very practical way. In other words, it would be much wiser to have a broader coverage, so that the men as a whole would be represented, or certainly, if they preferred to do it, the men in the departments, transportation, electric, and gas.

1961 Q. Now, I believe you stated that you were present when Mr. Smith was testifying yesterday and that you have really nothing to add or detract from his testimony with the exception of the fact that not so many questions were asked at the Norfolk meeting. Am I right in stating that?

A. Of course, I do not recall everything that Mr. Smith said yesterday, but I do not recall the substance of anything that was overlooked by him. There were a number of questions asked, and—well, I would not think as many as he indicated. There were quite a number of questions asked by different ones.

Q. And a lot of those questions were as to whether the men should organize, and how they should organize, is that correct?

A. There were questions that we could not answer because of the law on the subject.

Q. Did you answer any questions yourself, Mr. Jones?

A. I think I answered several of them?

Q. Can you tell us just briefly and substantially the questions that you answered?

A. Well, one of the young ladies in the accounting department—I think she was in the accounting department when I was here in Norfolk, and I think she still is—asked a question as to whether or not they had to join anything, and I told her that unless they wanted to they did not have to. There
1962 were some questions asked as to how—I think one question was how the company wanted the men to organize and if they want them to organize, and we told them very definitely that we had no suggestion to make along that line.

Q. About how long did this meeting last?

A. I guess for an hour.

Q. And Mr.——

A. From about eight to nine.

Q. And Mr. Throckmorton is the one who read the speech, which is in evidence, I believe and which you have identified as Board Exhibit 4?

A. He presided over the meeting.

Q. When you and the officials of the company left, the representatives remained at that meeting, did they not, or in the auditorium?

A. I think some four or five of them left before we finished answering the questions. When we finished answering the questions we advised them that they could stay there if they wanted to, and we left.

Q. And how many were present at that meeting?

A. Approximately 70.

Q. And of the 70 your best recollection is that four or five left before the officials left?

A. That is right.

Q. Then you told the employees, or the representatives, that they could stay. Why did you tell them that they could

1965 stay?

A. They could stay and discuss among themselves if they wished to what we could not discuss with them; namely, what they were interested in.

Q. And that is if they wished to form a union?

A. If they wished to form a union or if they did not wish to.

Q. Or if they did not wish to, yes.

A. Yes.

1966 Q. Now, then, on May 25th you had a meeting of the principal departmental heads in Richmond, did you not?

A. That is correct.

Q. And you also had a meeting of the principal departmental heads in Norfolk?

A. That is correct.

Q. Did you attend both meetings, Mr. Jones?

A. I attended both meetings. I think I stated this morning, but I am not sure, that when I was asked whether my recollection of all the events that Mr. Smith had described checked with

1967 his, that I did not recall that there were quite as many department heads present as Mr. Smith recalled were present at the Richmond meeting.

Q. Now, did you yourself issue any instructions to any of the departmental heads present at either of the meetings on May the 25th?

A. I do not recall issuing any instructions.

Q. Who issued the instructions?

A. Well, in the discussions it was made quite clear to the departmental heads that they were not to take any part, and it was to be made clear to their subheads that they were not to take any part, and I did not think it was necessary for me to reiterate what was said to the men present and listening.

Q. Now, you did not give them any written instructions, did you?

A. I do not recall any written instructions on that subject.

Q. Now, wasn't that considered a matter of importance to yourself and the other officials of the company as to the attitude of your foremen and supervisors?

A. It had been considered of importance, otherwise the department heads would not have been brought in for that discussion.

Q. Now, you posted a written notice, Board exhibit 3, on April 26, 1937, and a written speech was prepared and delivered on
1869 May the 24th, 1937, Board exhibit 4. Now, can you tell us why no written instructions were issued in regard to the same subject matter which was really covered by those two exhibits?

A. Well, I presume it was because they did not think it was necessary. I did not think it was necessary as far as my department was concerned.

Q. And how long did it take you to give those instructions to the departmental heads on the 25th of May?

A. I would say that the meetings probably lasted in the neighborhood of a half an hour, or three-quarters.

Q. And were any questions asked by any of the foremen or supervisors present at those meetings?

A. I think some of them did ask what they could say to their men, as to whether they could answer questions somewhat similar to what we are asked down here: "Suppose we are asked some of them, how could we answer?"

And our position was, and we made it very definite, that we could not answer anything except that the men could organize and that they did not have to organize, to suit their feelings.

1969 Q. Were any questions propounded by your foremen or supervisors with respect to what they should do in giving any information in regard to any unions?

A. They were told very definitely that they could not favor or disfavor any union.

Q. Did any of the supervisors or foremen at that meeting express their own personal feelings as to unions in general?

A. I don't recall such expressions.

Q. So far as you know, Mr. Jones, were those instructions ever violated by any of the foremen or supervisors in the transportation department?

A. So far as I know, they were not.

Q. At any rate, you had no complaints, had you, Mr. Jones?

A. No.

Q. Going back for just a moment to the meeting of May 20, 1937, you heard Mr. Smith testify that at that time the newspapers were full of strikes, violence, labor organization activities, and so on?

A. Yes.

Q. Do you recall reading those articles?

A. I recall throughout the spring the papers contained many articles regarding strikes, organization activities, and so on.

Q. And that was at least one of the reasons for issuing the bulletin which is Board's Exhibit No. 3 on April 26th, 1937, wasn't it?

1970 A. Which is Board's Exhibit No. 3, you say?

Q. Yes. That is the bulletin of April 26, 1937?

A. The condition of unrest throughout the country——

Q. And did you?

The WITNESS. That condition of unrest throughout the country made it seem desirable to post that bulletin.

1971 By Mr. HILTON:

Q. I believe you stated, Mr. Jones, that on June 14, 1937, you talked with Mr. Elliott in Richmond?

A. That is right.

Q. And he had had no appointment with you on that date, had he?

A. He did not.

Q. Did he just happen to run into your office, or run into you, rather?

A. No. He came in to see Mr. Holtzclaw and Mr. Holtzclaw being out he must have asked to see me or someone must have told him I was there in my office, and I was told that he was outside and wanted to see me, and I invited him in.

Q. Did you ask him to present any credentials of any kind?

A. No.

Q. You didn't have in mind negotiating with him anyway, did you?

A. I did not.

Q. So your discussion with him was of a general nature in addition to your making the appointment with Mr. Holtz-
1972 claw for Mr. Elliott, was it?

A. Well, as I stated this morning, he told me that he wanted to see Mr. Holtzclaw in order that he might discuss nego-

tiations with him, as he represented this group of approximately 190 men. And I told him that he would have to see Mr. Holtzclaw, that I could not discuss that with him. He then told me, as I said this morning, that he understood the National Labor Relations Board would insist upon recognition of a group of these men. I told him I didn't know what the Board would insist upon. And I think at that time I told him that our counsel had advised that [illegible]d not think the Act affected the transportation or gas depar[illegible]t. I am not sure that I told him that, but I think I did. I did [illegible] him that I would be very glad to make an engagement with Mr. Holtzclaw for the next morning if he wanted to see him. And I did make the engagement, and he did see him.

Q. Were you present at the meeting the next day, June 15th?

A. I was not.

Q. During the conversation that you had with him on the 14th Mr. Elliott mentioned the fact that he had attended Randolph-Macon College?

A. He did.

Q. Did you consider that usual or unusual, to have one of your operators who had attended Randolph-Macon College?

1973 A. It is certainly not normal. We have had them before.

Q. You have had them before?

A. We have had them before. I think it was only a few years ago we had a seminary student on the cars.

Q. And did you make any comment on the fact that Mr. Elliott was a former Randolph-Macon student; that is, did you make any comment to Mr. Elliott himself?

A. There was no occasion to. He just told me that he was.

Q. And you shrugged your shoulders and said okay, or something like that?

1974 A. No. I don't know that I made any comment at all other than when he said he was going to Ashland, he told me he had attended Randolph-Macon College and I don't recall whether I even asked him how long ago it was, or anything about it.

Q. You stated that that was a surprise to you. Isn't that correct? It was a surprise to you to learn that Mr. Elliott had attended Randolph-Macon College?

A. Well, it was a surprise in that I didn't know that he had attended Randolph-Macon College. I think I had heard before that he had attended some college.

Q. And did you keep your surprise to yourself?

A. There wasn't any occasion to gush over the fact that he had gone to Randolph-Macon College, and I am sure I did not do it. If I made any comment it was a very casual one.

Q. Did you compare him with any of the other bus drivers that you had?

A. I did not.

Q. Did you at that time state that you could get bus drivers anywhere?

A. No; I did not.

Q. Did you mention the 1922 strike to Mr. Elliott?

A. I don't recall any discussion of that at all. I cannot imagine any reason why I should make any comment to an utter stranger about conditions of that kind.

1975 A. I was.

Q. And you recall the disacussions with regard to the closed-shop provision of a proposed agreement as submitted by the I. O. E.?

A. I do.

Q. And those discussions lasted about two hours on the first day, did they not, that is, the first morning?

A. They lasted a good part of two hours, I would say.

Q. Then after lunch you dropped the closed-shop provision and went into a discussion of other matters contained in the proposed agreement?

A. That is right.

Q. After dinner that night did you again discuss the closed-shop provision, or was it the following night that you discussed it?

1976 A. My recollection is that the discussion of the open shop at the preliminary discussion was passed by until the later part of the negotiations.

Q. In other words, until you had ironed out the other provisions you left the closed-shop provisions?

A. I think that was during the latter part of the negotiations when the wage increase was in its final stage of discussion.

Q. Were you opposed to the closed-shop provision in the agreement?

A. Well, initially I was. I was accustomed to an open shop.

Q. What made you change your mind?

A. The final decision on that matter was tied in with the consideration that we had agreed on everything, I think, but the wage and the closed-shop feature after two days of arms-length bargaining, and there had been a right strong appeal made to me in the argument advanced that it was only reasonable and fair, if the organization was going to negotiate for the men as a whole, that all of the men should be participants in the development of the contract or agreement and the rewards, if any; and it seemed to me that it was a very logical kind of

presentation; that is, the mass of employees wanted a closed shop, that a few holding out and receiving the same benefits
1977 would not be on the same footing and would not be entitled to them. And that appeal was largely responsible in changing my mind on the subject.

1996 By Trial Examiner FORT:

Q. I would like to get your idea on this, Mr. Jones. Word is sent out to a group of workers from the office of the man who determines the hiring and firing of those workers, and they are brought in within the working hours to a meeting on the company property and are told they may or may not select a representative to meet with the president to discuss their labor relations, and then they are told that as soon as that representative is selected he will see this foreman on his way out. Is that your idea of a free selection of representatives for the discussion of labor relations?

A. If the representatives, as they have been referred to, had been empowered to act at all on behalf of the men or to agree to anything on behalf of the men, I think it would be out of line. But the men who were spoken to and advised through the various heads of departments, or foremen or subheads of departments, were not supposed to be other than what I think Mr. Smith aptly termed emissaries to go to the meeting and find out at first hand what the president of the company had to say and to report back to the men, because it was an impracticable thing for all the men to be attendance at the meeting.

2004 Q. And your refusal or failure to bargain with these 190 men who were the first organized group to approach you after your bulletin, as I understand it, was for the convenience of the company, was it not? I mean, your failure was because it was not the way you wanted it done.

A. Well, I think, perhaps, you might go further and say that it was not—I do not recall that there was any evidence produced to me—maybe Mr. Holtzclaw would have a different answer—indicating that Mr. Elliott had any——

Q. You did not ask him; did you?

A. No, I did not. He never said that he represented them. The petition that was presented did not cover that point, I think.

Q. Do you mean that you do not think they represented a concerted effort on the part of the men to act jointly on the matter affecting their labor relations; that is, your idea of concerted action by the men?

A. I would say it was an action on the part of a group of men representing a portion of the department.

Q. Were they not the great bulk of the transportation department employees in that area?

A. In Norfolk; yes.

Q. Well, that is all they were asking about, is it not?

A. Yes, sir.

Q. That particular area.

2005 A. That is right.

2007 Q. Was not that meeting of May 24th, Mr. Jones, really to get over the message to the employees that they did not have to join anything if they did not want to?

A. The meeting of May 24th was definitely to advise them of just what their rights were.

Q. Well, you did not tell them anything except what you could not help tell them.

A. If they wanted to join a union they could do it; they could join one of their own choosing.

Q. They knew that before, did they not? Do you think that anybody on the company rolls had any doubt that they could join a union if they wanted to? Your policy does not indicate anything to the contrary?

A. I do not know whether they realized that or not.

2008 Q. What appears to be the reason? Could there have been a contrary feeling?

A. You will recall this, I dare say, that there were notices in the paper to the effect that organization was going on at the President's wish and direction. I had no doubt that all the men felt——

Q. That they had to join a union.

A. That they had to join a union.

Q. As I said, was it not the real purpose to advise them that they did not have to join?

A. That they did or did not—whatever they wished.

Q. How could you conceivably have had any doubt that they had a right to join if they wanted to?

A. The Wagner Act indicated that there was some doubt in the minds of people as to what their rights were in that respect.

Q. You mean now that there was some doubt about their right to join a labor union?

A. I do not think it would have been necessary for them to have said what they did——

Q. Can you state anything in the Act that would cause any possible doubt about a right of a man to join a union?

A. No; not of his right.

Q. Well, what doubt did you have in your mind of a right of a man to join a union if he wanted to?

2009 A. Well, there were a great many men on this property who, I think, very definitely, if they had been interviewed at the time, would have said that the company's position was that we did not want the men to join a union. There were probably some who would have said that unions had been discouraged so in the past that they did not want to join or were afraid to join, or it might be an improper thing to do, and it seemed a very reasonable thing to make that statement.

2010 Q. Now, I have not got any satisfactory answer to my question, the question that is in my mind as to how you could think a man would have any doubt about his right to join a union prior to this talk that was made on May 24th, unless you felt that they may have thought that the company did not want them to do it.

A. I think that there are probably a good many men who would have refrained from joining any union unless they had felt that it was entirely agreeable to the company for them to do so.

Q. Then, you wanted to assure them that they did not need to join any union?

A. That they could or could not, as they saw fit.

2018 Recross-examination by Mr. HILTON:

Q. Well, do you recall stating that there were a number of employees who had a doubt as to their right to join any labor organization?

A. No. I would say if I have expressed it that way, I did not intend to. As far as their rights were concerned, I

2019 expect if they reasoned about it they would know; if they did not care to reason about it, they might ask what their rights were; but I think there were a number of employees of the company who would not have joined any labor union if they thought that the company did not want them to do so. That is what I tried to say.

Q. Now, how do you know that?

A. Well, I know that. You asked me how I know it. I said I believed that to be true. I think that it is true, because I know we have a great many old employees who want to know what is the company's attitude on things and whether the company is interested in this or interested in that. I think undoubtedly there are men who asked that question, whether it was all right for them to join unions or whether they felt that the company was agreeable to it.

2033 R. J. THROCKMORTON, a witness called by and on behalf
2034 of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MOORE:

Q. Mr. Throckmorton, you are vice-president of the Virginia Electric & Power Company in charge of the Norfolk division, are you not?

A. Yes, sir.

Q. How long have you been vice-president with the company?

A. Since December 1929.

2035 Q. You were first vice president in charge of the Norfolk division, were you not?

A. From 1929 until the spring of 1934.

Q. And then you were located in Richmond?

A. I went over to Richmond as vice president in charge of the electric department.

Q. From 1934 until when?

A. April of 1936.

Q. And in April 1936 you were transferred back to Norfolk?

A. I was transferred back to Norfolk as operating vice president in charge of the Norfolk division.

Q Now, from the standpoint of geography, generally speaking, what are the three main geographical divisions of the
2036 company?

A. The Richmond division, the Norfolk division, and the Carolina division.

Q. Now, the Norfolk division includes the city of Norfolk, city of Portsmouth, city of Suffolk, and surrounding territory, does it not?

A. And territory including a portion of the Carolina territory.

Q. You mean south of Norfolk?

A. Immediately south of Norfolk and Suffolk area.

Q. Now, as operating vice president in the division you would not necessarily be involved in the development of company-wide policies to the extent that Mr. Holtzclaw or Mr. Smith or Mr. Jones would, would you?

A. I would not.

Q. Now, under you in the Norfolk division the immediate managers are who?

A. Mr. Carroll, of the transportation; Mr. Brooks, of the gas department; Mr. Brown, of the electric department; Mr. Ross, manager of the Portsmouth district; Mr. Rice, manager of the Suffolk district; and Mr. Harper, manager of the Virginia Beach district.

Q. Now, Mr. Throckmorton, coming to the immediate matters involved in this proceeding, I ask you whether or not you were advised of any labor union activity anywhere in your
2037 division affecting the employees of the power company in March of 1937.

A. In March of 1937 Mr. L. E. Davis, chief engineer of the power house for the Norfolk area called me on the telephone and told me that a Mr. Parker had called him by telephone requesting an interview. I do not recall the particular organization that he represented, but he stated to Mr. Davis that he wanted to come over and talk to him about organizing the men in the power plant.

Q. What did you say to Mr. Davis?

A. I told Mr. Davis to tell him that he would give him an appointment. I then talked to Mr. Holtzclaw and told him about it, and he told me to advise Mr. Davis to tell Mr. Parker that he could go up to the plant, but that he could not do it on company property and not during working hours.

Q. Did you tell Mr. Holtzclaw about it the same day that Mr. Davis called you?

A. I did.

Q. And did you then call him back and advise him that same day as to what Mr. Holtzclaw's instructions were?

A. I do not recall whether it was that day or the following day. His telephone call was in the afternoon and I am not sure whether I got in touch with Mr. Holtzclaw soon enough to call him back that afternoon.

Q. So far as you know and believe, your report to Mr.
2038 Holtzclaw was the first knowledge that Mr. Holtzclaw had of the matter?

A. So far as I know, yes.

Q. Now, did anything further develop from that?

A. I understood from Mr. Davis that Mr. Parker showed up in about two weeks.

Q. And did he have a talk with him?

A. He did have a talk with Mr. Davis, and he so told me, that he told Mr. Parker.

Mr. HILTON: Mr. Examiner, I am going to object to this, on the ground that Mr. Davis is no doubt available as a witness and can testify here.

Mr. MOORE: No; but that is very material in showing the purposes and intentions of the officials of the company.

Mr. HILTON: I mean as to what the occurrences were during this meeting between Mr. Parker and Mr. Davis.

Trial Examiner FORT: He is simply telling what Davis told him. It is not for the purpose of establishing the truth of it.

Mr. MOORE: That is right.

By Mr. MOORE:

Q. Just go ahead, Mr. Throckmorton.

A. Davis told me he had a meeting with him and told him what I had advised him.

Q. Would you say the meeting was agreeable or not?

A. He did not say otherwise. I presume it was.

2039 Q. Now, did anything further develop from that, so far as you know?

A. So far as I know, Mr. Parker never came back to talk to Mr. Davis.

2040 Q. Now, did the matter of Parker's call ever come to you from any other source than directly from Mr. Davis, the man that was interviewed by Mr. Parker?

A. No, it did not.

Q. So far as you know and believe, was there any effort made by Mr. Parker to organize the men over there?

A. So far as I know, there was not.

Q. Now, after that date, do you recall whether or not, at any time around the middle of April, there did come to your attention any request of any group of employees of the company on your division for some adjustment in their wages?

A. About the middle of April, Mr. Cole and Mr. Carroll came into the office. Mr. Cole had a——

Q. Who is Mr. Cole?

A. Mr. Cole is assistant master mechanic in the transportation department at Norfolk—with a typewritten—well, it was just something typed on a sheet of paper, with no signatures, stating that a group of men from the shop department had presented it to him, I think on the day before.

Q. I hand you what is marked here as Board's Exhibit No. 11-B, and ask you to look at that and say whether or not, to the best of your knowledge and belief, that is a copy of the paper to which you refer [handing the exhibit to the witness]?

A. It is.

2041 Q. So far as you recall, was that the only request that came to your knowledge for any discussion of wages by any group of employees in your division shortly prior to the bulletin of April 26, 1937, which has been filed here as Board's Exhibit No. 3? Do you identify that bulletin of April 26th [handing the exhibit to the witness]?

A. Yes, sir; that was the only indication that I had that any group had gotten together to make any request.

Q. Now, did you collaborate in the preparation of this bulletin of April 26th?

A. No; I did not, except, probably, when in Richmond prior to that time, the matter might have been mentioned, and my attention was called to it in that way.

Q. Did you report to Mr. Smith, who was your immediate superior, the matter of this request from Mr. Cole's department, promptly after it came to your attention?

A. I told Mr. Carroll to forward it to Mr. Jones.

Q. And that was before the April 26th bulletin; was it?

A. That was. I presume it was forwarded.

Q. Now, were copies of the bulletin of April 26th posted on the regular bulletin board for the Norfolk division?

A. They were sent to me, and I saw that they were posted.

Q. Do you talk back and forth to Mr. Smith and Mr. Jones quite constantly?

A. We have a private wire between Richmond and Norfolk, and I presume, an average of twice a day.

2042 Q. Following the posting of the bulletin of April 26th, do you recall whether or not there came to your attention a copy of a paper which has been filed in evidence here as Board's Exhibit No. 12, which is captioned, "Petition to Officials of the Virginia Electric & Power Company," and which is signed, I believe, with 190 names? Do you recall that petition coming to your attention [handing the exhibit to the witness]?

A. Yes; I recall Mr. Bishop and Mr. Carroll bringing it into my office.

Q. And what did you do with it?

A. Well, we discussed it. The principal provision in the petition we discussed was the matter of 75 cents an hour, which personally I never felt that any man that signed it ever felt that he was going to get. After a short discussion, I told Mr. Carroll to send it up to Mr. Jones.

Q. The reaction you had was that it was a trading proposition, was it not?

A. It certainly was.

Q. And you sent it on up to——

A. To Mr. Carroll, to forward it to Mr. Jones and have him make some copies of it.

Q. Do you recall the next event that occurred, so far as the chronology of this matter is concerned, was a conference that was called in Richmond for May 20th—did you attend that conference?

2043 A. I did.

Q. Did you hear Mr. Smith's testimony in regard to that conference.

A. I did.

Q. Without involving a great deal of repetition, I simply ask you whether or not you agree with the facts as he stated them in his evidence, as to what occurred at that conference, or if you have any different points that you recall, will you just point them out?

A. My recollection of the facts at that meeting is just as stated by Mr. Smith, and I have nothing further to add to them.

Q. As a result of that conference, among other things, was a meeting held in Norfolk on the night of May 24th, four days later?

A. It was decided at the meeting of May 20th that the meeting would be held in Norfolk on the 25th; later changed to the 24th.

Q. When did you get advice that it was felt advisable to change the date from the 25th to the night of the 24th?

A. As well as I can recall, about mid-day on Monday, the 24th. I do not recall definitely whether Mr. Holtzclaw called me or whether Mr. Smith called me. The telephone message stated that Mr. Smith and Mr. Jones would be down with a copy of the prepared speech which Mr. Holtzclaw was to deliver
2044 in Richmond on that night, and that I was to deliver it in Norfolk on the same night.

Q. Did you pass word along that the meeting would be held on that night instead of the next night?

A. I did.

Q. And now, following the meeting in Richmond on May 20th, or that conference, at which time it was decided to hold such a meeting and to invite the men to send in some of their groups to hear Mr. Holtzclaw discuss this matter, what did you do on that point?

A. I did nothing, because the men who were in charge of the different departments had gotten the word there, and it was not necessary for me to do anything further, until I had gotten the notice that the meeting had been changed.

Q. Now, had the superintendents and managers of your division who had attended the Richmond conference had explained to them there as to how the word should be passed along to the different groups of employees in regard to sending some of their members to such a meeting?

A. I do not know that it was explained to them how they were to do it. They were told to get their groups together in a normal way of getting out such information.

Q. Well, had there been any suggestion made at the Richmond conference that representatives be selected with authority to do anything at such a meeting?

2045 A. Nothing at all of that nature.

Q. Had there been any restriction or suggestion of any

limitation as to how many persons should come to the Norfolk meeting?

A. No; except it was not felt that all of the men could attend, and the invitation should be extended to those that could come.

Q. It was simply an invitation for those who wanted to come to come, and to pass the word along to their fellow employees as to what had occurred?

A. That is it.

Q. You heard Mr. Smith's testimony in regard to just what did occur at the Norfolk meeting on the night of May 24th, did you not?

A. Yes.

2046 Q. Does your recollection check and agree with his testimony as to what did happen at that meeting?

A. I do not recall whether Mr. Smith testified that before I read the prepared statement I stated that a similar meeting was to be held in Richmond. I do not recall whether he made that statement, but I did so state before I read the prepared speech.

Q. You know a great many of the employees, I suppose, or nearly all of them on your division, do you not?

A. Well, there are a great many of them; I know a number of them by their faces. I do not know the newer employees.

Q. About how many did you have at that meeting on the night of May 24th?

A. As I recall, I asked Mr. Jones—I said "I guess there are probably a hundred here." He said, "No. I counted them. There are 70."

Q. Well, did you recognize that there were men there from all sections of the company?

A. I did.

Q. On this division.

A. I did.

Q. Now, after you read the statement of Mr. Holtzclaw's do you recall that there were questions asked by a number of employees along the line that Mr. Smith testified about?

A. Yes; there were quite a number.

2047 Q. And the answers were given substantially as he described?

A. Just as he described.

Q. Now, following that meeting, do you recall whether or not there was a meeting that you had with the managers and superintendents of your division the next afternoon, May 25th?

A. The next afternoon in my office about 4:30 or 5 o'clock.

Q. What occurred at that conference?

A. Mr. Holtzclaw, Mr. Smith and Mr. Jones came into the conference from Richmond, and it was impressed upon the super-

visors and superintendents that in view of the questions that had been asked the night before, we wanted them to be very careful not to do anything or say anything that would in any way appear to influence any action which the employees might desire to take.

Q. Were the events of the previous night reviewed among those present at this May 25th meeting and discussed and explained?

A. Not to any great extent. As I recall, the statement was made that the men seemed to be very anxious to get some attitude of the company, or the attitude of some of the officials of the company, and it was for that reason that we wanted to be sure that they understood that the men were to act and do as they saw fit and desired.

2048 Q. Were any instructions given to the superintendents and managers who were present at this meeting of May 25th in your office as to what instructions they were to pass along to their foremen and supervisors?

A. They were to pass the same instructions to the foremen as we gave them there.

Q. And to the supervisors also?

A. And to the supervisors also.

Q. And so far as you know and believe, was that done?

A. They never have fallen down.

By Mr. Moore:

Q. Did you ever have any information come to you that indicated to your mind that it was not done?

A. I did not.

Q. Now, Mr. Throckmorton, some question has been asked about the status of two or three of the employees that seemed to have taken some part in some activities shortly following that. There was mention made by Mr. Diggs. What was Mr. Diggs' kind of work at that time?

A. At what time, Mr. Moore?

Q. The end of May, 1937.

A. Up until May 1, 1937, Diggs was a clerk in the store

2049 room. Mr. Dickson had a secretary who decided to get married, and he took Diggs into his office temporarily, and he was in Mr. Dickson's office as a clerk at the time of the meeting of May 24th.

Q. Was his position later changed?

A. He was later changed and given a permanent job as secretary to Mr. Dickson.

Q. How much later, do you know, approximately?

A. I couldn't tell you.

Trial Examiner Fort. You might bring out who Mr. Dickson is.

By Mr. MOORE:

Q. Mr. Dickson is——

A. Mr. Dickson is assistant treasurer, in charge of the accounting department of the Norfolk division.

Q. Up until August 5, 1937, did Mr. Diggs in any way occupy a supervisory position?

A. No.

2051 Q. You heard the testimony of Mr. Elliott, did you not?

A. I did most of it. I don't say that I heard all of it.

Q. You heard him testify that on or about May 29th there was a meeting held at the "Y" at 18th Street at which he submitted a plan that was finally called the E. A. C. plan, or the Employees Association of Committees, a copy of which has been filed in evidence here, and you heard him say further that that was discussed and at two or three days thereafter he saw you. Will you state whether or not such occurrence took place?

A. About the first of June or along about the first week in June Mr. Elliott, together with Mr. Hough and I can't recall the other members of the committee, but I think Mr. Reutt was on the committee and also Mr. King. They came in to see me to discuss informally, as I recall it, what had been done with the petition that had been presented.

Q. You are referring to this petition which is Board's Exhibit No. 12?

A. The petition of the 190 men.

Q. Board's Exhibit No. 12?

A. Yes.

Q. Had you suggested that they come to see you or did they come of their own volition?

A. I think they asked Mr. Bishop to make an appointment with me.

2052 Q. And they came to find out, if they could, what was happening to that petition?

A. As I recall it, that was the principal reason for their coming.

Q. What did you tell them?

A. I told them the request was being considered along with everything else. And I thing I jokingly asked them if they expected to get 75 cents an hour. And Mr. Hough said well, he hoped he would.

Q. Was there any discussion whatsoever with you about the formation of any organization by them?

A. None whatever at that meeting.

Q. Have you given the substance of all that did occur at that meeting?

A. As nearly as I can recall.

Q. As nearly as you can place it was that approximately June 1st or the week after June 1st?

A. I think it was around the first of June. I don't recall exactly. It was somewhere around the first week in June.

Q. Was that the first time you had discussed any of these matters with Mr. Elliott or any of this group?

A. As I recall it, that was the first time I had ever seen him to know him.

Q. Did you tell him that the matter was being considered?

A. I did.

2053 Q. Did you see Mr. Elliott a few days later?

A. A few days after that Mr. Elliott came into the office and told me he wanted to go to Richmond.

Q. Was he by himself?

A. He was by himself at that time.

Q. Can you place the date when this second visit of his occurred?

A. It was five or six days after the committee was in to see me.

Q. That would be somewhere around June 5th or June 6th, or something like that?

A. No. The committee was in June 5th or June 6th. This was a little later than that.

Q. A little later than that?

A. Yes.

Q. In the next week?

A. Yes.

Q. What occurred?

A. Mr. Elliott said he had been working hard on getting an independent organization set up.

Q. Did he say in what section of the company?

A. He was principally interested in the Norfolk Transportation.

Q. He was an operator in that section?

A. A car and bus operator in the Norfolk district. He

2054 said that he had been very much interested in it for some time and had gone so far as to write Mr. Hamilton, who was the congressional representative from this district, and Mr. Hamilton had sent him a copy of the Act, and that he had been spending his own money running around and that he hoped to be able to get an organization over the entire company. He wanted to go to Richmond to see if it could be done up there.

Q. But he said he had hoped of trying to get it set up over the company as a whole?

A. A company-wide independent organization, a company-wide independent union. He made the statement that he knew

about the American Federation of Labor and the C. I. O. but he wasn't interested in either one of them. He wanted to borrow the automobile, but I told him we couldn't let him use any company equipment of that nature or any company equipment.

2057 Q. Do you recall that there came to your attention just after that meeting the newspaper story that one of the C. I. O. organizers had stated at that meeting that Mr. Elliott had made a speech in which he had claimed that a job had been offered to him by the company?

A. It did not appear in the Norfolk paper. Mr. Holtzclaw called me from Richmond and asked me if such a statement had been made and if I could find out. I told him I had no way of finding out.

2058 He said, "Such a statement has appeared in the Richmond paper, given out by one of the organizers," and that he was going to refute it by a bulletin and that he would send me a copy of the bulletin to be posted in the Norfolk Division.

Q. So far as you know and believe, was there any truth whatever in the statement or insinuation that such a job was offered him, or a job of any kind?

2059 Or did you have knowledge of such, if it did occur?

A. The first I heard of it was the testimony in this room.

2060 Q. Now, Mr. Throckmorton, up until the proposal of the I. O. E. was received on July 19, 1937, which has been filed in evidence here, did you have any knowledge as to what, if anything, was further going on among the employees?

A. No.

Q. Your next knowledge of the matter was when the proposal from the I. O. E. came in; is that right?

A. When I got word from Richmond that the proposal had been submitted.

Q. Now, did you hear the testimony of Mr. Smith in regard to the three-day conferences that occurred there in Richmond in connection with the bargaining between the general committee of the I. O. E. and the company representatives?

A. I did.

Q. Does your recollection check and agree with his statement?

A. It does.

Q. Now, you recall that he testified that after the discussion on the first day in regard to the general sections that the

2061 conference broke up into four sections, with you placed in charge of a group of conferees representing the department, is that right?

A. That is correct.

Q. Now, have you prepared at my request a memorandum which summarizes the negotiations which you conducted with the representatives of the gas department, which were embodied finally into the August 5, 1937, agreement, insofar as it relates to the gas department?

A. I have.

Q. I just ask you to identify that memorandum as yours [showing a paper to the witness].

A. That is the memorandum.

Mr. Moore. May we just file it as an exhibit?

Mr. Hilton. Mr. Examiner, that goes in over the same objection as the two previous exhibits of Mr. Smith and Mr. Jones.

Mr. Moore. That is right.

Trial Examiner Fort. That is right.

Mr. Moore. I file this as Respondent's Exhibit No. 18.

Trial Examiner Fort. It will be received.

(The document referred to was marked "Respondent's Exhibit No. 18" and was received in evidence.)

2062 By Mr. Moore:

Q. Now, without going into a lot of detail, will you just take the memorandum and refresh your mind and state what were the several high points that were the subject of the main negotiations so far as the gas section was concerned?

2063 A. They raised the question of a 40-hour week and they had requested quite an increase in wages. The principal thing about which we talked the first afternoon was an adjustment of wages that would be made for a certain number of employees in the gas department that the representatives of the gas department felt would be discriminated against, in view of the wages they were getting as compared with the work they were doing.

I went over each individual case with them, and that matter was left to go on to decide other matters that came up and to finish that particular point of the 40-hour week. As to whether there was an agreement reached about the men, I think all but two of the men we have had recommended that a change be made.

Q. In other words, there was special consideration given to them?

A. Special consideration given to those individuals of the gas department.

Q. To certain individuals?

A. Whom the committee felt was being discriminated against. The point that they were making was that these adjustments should be made before any general wage change which might be reached in connection with working out the whole agreement.

Q. Now, was an agreement reached by which certain employees whom they had been advocating should be given special
2064 consideration? Was an agreement reached as to those?

A. An agreement was reached as to those men.

Q. And they got the general increase which was finally embodied in the August 5th agreement, and in addition got certain increases?

A. They got theirs before the general increase was applied.

Q. Now, insofar as the working hours were concerned, the 40-hour week, what was the main point that was covered there?

A. Well, they were very anxious to get the 40-hour week. There was quite a bit of discussion on that point. We endeavored to point out that since the gas department worked particularly in the production, mostly shift employees, that is, men who rotated for the 24-hour period, that it would be very difficult to work out a program of shifts for a 40-hour week, and after discussion it was agreed to let that stand as it was before.

Q. Now, was any arrangement worked out for overtime?

A. As I recall, the men in the gas department were not particularly interested in overtime. I think one of them stated that if he worked on overtime production that there would not be overtime; that they would prefer to work on the basis that they had been working, but that they were willing to let that go and whatever was decided—and it was so pointed out,
2065 that whatever the overtime production was that would apply to all departments alike.

Q. They were satisfied to let it rest at that, were they?

A. Evidently. There was quite a discussion about classification of employees. That was a point that I very strenuously opposed. The other members representing the gas department of the company with me were likewise very strenuous in their opposition to classification.

Q. Now, was all of that taken into consideration in the trading in regard to the final adjustment of wages?

A. Well, the whole thing was considered as a whole. It was a matter of give here and take here, but there was quite a bit of negotiating for a period of about two days.

Q. Who were the men who were representing the I. O. E. on the general committee in those negotiations from the gas department?

A. Mr. McHorney, Mr. Walsh, and Mr. Bowen.

Q. Now, will you state whether or not in your judgment those three men handled the negotiations in an arm's-length way and in an able fashion?

A. I do not know what you mean by "arm's length." They did a terrible lot of arguing. I think they were perfectly capa-

ble, and I think the men in the gas department felt that they had picked out the best representatives they could get
2066 to handle the negotiations. That is my personal feeling.

Mr. HILTON. That is objected to, Mr. Examiner. It is merely speculating and an opinion on his part.

Trial Examiner FORT. I do not think his opinion is objectionable.

Mr. HILTON. It does not carry any weight.

Trial Examiner FORT. You want to put in evidence as to what they did, but the opinion as to whether they were acting in good faith I do not think is permissible.

The WITNESS. Another point that was brought out was in connection with the high-pressure complaint truck, in which the committee demanded that a helper be on a complaint truck at all times. This was discussed at some length, and it was agreed that complaint trucks would have a helper at all times on the high-pressure truck.

By Mr. MOORE:

Q. Now, Mr. Throckmorton, did you have any knowledge of the proposed discharge of Mr. Everard Mann, an employee in the transportation department, before he was discharged?

A. I did.

Q. How did the matter come to your attention, and what was done?

A. Mr. Bishop told me that he was rather bothered about one of the operators, and I asked him, "What is the matter?"
2067 He related his case to me. I said, "Well, what is his record?" He said, "He has a very poor record." I said, "Well, why don't you let him out?" And he was let out.

Q. What did Mr. Bishop say he was bothered about?

A. He was very disrespectful. He recited the instance to me, that Mann had come into the dispatcher's office. He was sitting back with the dispatchers, and in a very—I do not what kind of tone—but he said, "Anybody seen this guy Bishop around here?" And Bishop says the dispatcher turned to him and said, "Ask Mr. Bishop. He is sitting over here." And Mann walked out.

To me it was just a pure case of an unruly employee, and I told Bishop to fire him.

2068 Q. Was anything said whatever between you and Mr. Bishop on the point as to whether or not Mr. Mann had ever engaged in any union activity?

A. Not a thing.

Q. Did you have any idea as to whether he had any union affiliation?

A. I did not recall who the operator was until a letter came in from Mr. Schauffler making the complaint. I think the letter was dated July 22nd, that the operator Mann had been discharged, and asking that an investigation be made, and I had to call Bishop to find out why he was discharged, and he told me, "He is the man you told me to fire."

Q. Mr. Schauffler was then the Regional Director of the National Labor Board?

A. The Regional Director of the National Labor Relations Board.

Q. Now, did you talk to Mr. Schauffler about the matter a little later?

A. He came in to see me on the sixth of August.

Q. Did you explain the circumstances fully to him?

A. I did.

Q. Was there ever any action taken by the Board on the matter until this complaint was filed on May 9, 1938?

A. So far as I know, there was not.

Q. Now, Mr. Throckmorton, I hand you what appear
2069 to be photostatic copies of the payroll advices covering the employment of Mr. Everard Mann from the date of his original employment on July 29, 1936, until his discharge on June 1, 1937. I ask you whether or not you have caused those photostats to be made and whether they are true copies of the originals of the official payroll advices in the company's office with respect to this man?

A. They are.

Trial Examiner FORT. On that, Mr. Moore, is there a slip—I understood that there was a slip that went along with each one that gave the real circumstances about the discharge or the reason for it.

Mr. MOORE. Well, you will notice there at the bottom of the last slip—discharged, services not satisfactory.

By Mr. MOORE:

Q. I will ask you whether any other memorandum or slip went along with the discharge of this man than that?

A. No.

Q. Just the official slip?

A. Yes, sir.

Trial Examiner FORT. That is the only one?

Mr. MOORE. That is the only one.

Trial Examiner FORT. That is what I wanted to find out.

Mr. MOORE. We now file this as Respondent's Exhibit No. 19, and I would like to have these marked as Respondent's
2070 Exhibits 19-A, B, C, and D, because there are four parts to it.

Trial Examiner FORT. Without objection, it will be admitted.

Mr. HILTON. No objection.

(The documents referred to were marked "Respondent's Exhibits 19–A, B, C, and D," and were received in evidence.)

By Mr. MOORE:

Q. Have you also, Mr. Throckmorton, had a photostatic copy made of the payroll advice covering the original employment of Robert E. Elliott and his release?

A. I have.

Mr. MOORE. We now file this as Respondent's Exhibits 20–A and B.

Mr. HILTON. No objection.

Trial Examiner FORT. It will be received.

(The documents referred to were marked "Respondent's Exhibits 20–A and B" and were received in evidence.)

2071 By Mr. MOORE:

Q. So far as you know and believe, were there any other reasons for the release of those three men than those assigned on the slips?

A. None other.

Q. Now, Mr. Throckmorton, will you just briefly state——

A. Mr. Moore, may I go back in the case of Mann?

Q. Yes, please.

A. That the real reason for him having been fired is on the slip. That is not the thing that really caused his dismissal. His record as an operator was poor, but the real reason for his dismissal was as stated on the slip.

Q. The principal reason?

A Yes.

Trial Examiner FORT. As I recall it, there is no reason stated there. It is just stated "services unsatisfactory."

Mr. MOORE. Services unsatisfactory.

Trial Examiner FORT. That is a condition, rather than a reason.

Mr. MOORE. Well, yes.

The WITNESS. I just wanted to clear that up.

By Mr. MOORE:

2072 Q. As I understand it, there were two factors or elements, rather, that entered into the matter. The main element was the report as to disrespectful conduct.

A. That is it.

Q. And the secondary reason was the fact that he had had a very bad record, anyway?

A. As an operator.

Q. As an operator?

A. Yes.

Q. Those were the two reasons that resulted in the determination that his services were unsatisfactory?

A. That is it.

Q. And now, Mr. Throckmorton, were you called upon in the discharge of your duties in the fall of 1937 and the spring of 1938 to carry into effect certain reductions in forces in the electric department of the Norfolk division?

A. I was.

Q. Will you just briefly summarize what were the circumstances surrounding that matter, and what was done?

A. At a meeting in Richmond, which was called by Mr. Smith of all the department heads and superintendents, the question of a reduction in forces was brought up. There was quite a bit of discussion as to the amount of work that was then on hand, and we were sent back with instructions to see what could be done towards a reduction in personnel. When I got back to Nor-
2073 folk, I conferred with Mr. Brown and Mr. Berry and Mr. Holik—Mr. Berry is assistant to Mr. Brown, who is manager of the electric department. The principal activity that had been going on in the electric department for the past two years had been in the distribution department. There had been a number of men taken on as temporary on construction work.

2074 Q. Was that in connection particularly with the building of a great many rural lines—small lines in rural communities?

A. Principally rural construction and the changing over of Ocean View from the old 2,200 volts to 4,000 volts; the same thing at Virginia Beach, the construction of or improving the lines at Virginia Beach, and some other heavy circuit work. The principal reason for taking on temporary men, however, was in connection with the construction of a large number of rural lines, principally south of the Norfolk area into eastern Carolina.

Q. Have you prepared a memorandum covering the main items of construction work carried on during the years 1936 and 1937, and also covering the construction work that was planned as of January 1, 1938, for the year 1938, on the Norfolk division?

A. I had that prepared.

Q. If that is your own memorandum, will you refer to that memorandum and just state how the construction program during the years 1936 and 1937 compared in total, without going into detail, with the construction program that was planned for the year 1938 in the Norfolk division.

A. In the Norfolk division, through 1936 and 1937, the total amount expended on construction was $735,000. The construction work for 1938 was $72,620, as proposed at the
2075 beginning of the year, of which approximately half has already been completed.

Q. Now, about what was the date when it was decided definitely that there would have to be some reduction in the line department particularly?

A. Around the first of March.

Q. How did you go about accomplishing that?

A. As I said, I talked to Brown, and Berry, and Holik, and told them to comb over the groups in the normal way of letting out men, and they asked me how far they could go, and I said "About 10 percent."

Q. You had at that time approximately how many persons employed in the distribution department?

A. I do not know. We got 13 less than we had then.

Q. Here is the memorandum of yours that you gave me, which may refresh your mind [handing document to the witness].

A. On December 31, 1936, we had 136 employees in the distribution department; that is, foremen, linemen, and on down the line. On December 31, 1937, we had 133, and on April 30, 1938, we had 119.

Q. Now, as of March 31, 1938, how many men were released?

A. 13 in the Norfolk area.

Q. That was approximately 10 percent, was it not?

A. Yes.

Q. What were the instructions that you passed along to
2076 your immediate assistants as to the way in which the men should be selected who were to be let out?

A. Well, they let out men before and they just used the old system of letting them out.

Q. What are the points that are considered in determining who shall be let out in that situation and who should be kept?

A. Length of service, their ability, attendance—there are lots of things that these men know more about than I do, and I leave it up to them to make the decision.

Q. Was the matter of union affiliation considered in any way, so far as you know?

A. It never has been.

Q. Did it enter into it in the slightest degree, in your mind?

A. In no way whatever.

Q. Now, have you prepared, at my request, a statement which gives a list of the second- and third-class linemen that were in the employment of the company, in the distribution department,

on your division on March 31, 1938, at the time these 13 men were let out?

A. I did have prepared such a list.

Q. I hand you this paper and ask you to identify it [handing a document to the witness].

A. This is the list.

2077 The WITNESS I would like to point out that it shows here a list of third-class linemen, date of appointment August 1, 1937. The reason it appears in that way is that in the agreement that was finally reached with the I. O. E., those negotiating the agreement—no man could get the 5-cent flat 2078 increase as a lineman unless he was rated as a lineman, and those men were linemen helpers prior to that time, and in order to get the 5-cent increase, they were raised to third-class linemen.

By Mr. MOORE:

Q. In other words, there was a group of men who got the benefit, through the negotiations of the I. O. E. negotiating the contract of a 5-cent increase in addition to the blanket increase.

A. In addition to the blanket increase; yes.

Q. And at the time they were given that 5-cent increase, and in order to do that they were classified as third-class linemen.

A. Classified as third-class linemen; yes.

Q. And, as I understand it, that accounts for the fact that these men who were shown on the company's records on March 31, 1938, as third-class linemen, and who had been appointed as such on August 1, 1937, were so appointed.

A. That is it.

Mr. MOORE. We now file that as respondent's exhibit 22.

Trial Examiner FORT. It will be received.

(The document above referred to was marked "Respondent's Exhibit No. 22" and received in evidence.)

2085 By Mr. MOORE:

Q. Mr. Throckmorton, I hand you what appears to be a similar slip, being a pay-roll advice with respect to Thomas H. Harrell, Jr., from the date of his employment, April 21, 1936, until his release on March 31, 1938. Will you look at these papers and state whether or not you had them prepared and whether they are correct photostatic copies of all pay-roll slips with respect to Mr. Harrell?

A. They are the copies.

Mr. MOORE. We will now file those as Respondent's Exhibit 24–A, 24–B, C, D, and E.

Mr. HILTON. No objection.

Trial Examiner FORT. They are received.

(The documents above referred to were received in evidence and marked "Respondent's Exhibits Nos. 24-A, B, C, D, and E.")

By Mr. MOORE:

Q. It appears from these exhibits that at the time Mr.
2086 Harrell was released he was one of a number of third-class lineman who had been so classified all at the same time as a result of the I. O. E. agreement of August 5, 1937, although these men were employed originally at somewhat varying times. Is that right?

A. That is true.

Q. Was the handling of his release by yourself and your associates in the management done in a similar way to that of Mr. Judge, simply with a view to determining who was the best man to let out and who was the best to keep?

A. It was the same way with all 15 of them.

Q. Did you have any knowledge at all with reference to his union affiliations?

A. I knew these men were all I. O. E. members.

Q. That is all you knew?

A. Yes.

Q. Do you recall whether there was brought to your attention in connection with his discharge any peculiar circumstances about him by Mr. Holik or by Mr. May or by Mr. Crafton?

A. No; I don't recall.

Q. There was not?

A. No.

Q. I now hand you what appears to be a similar set of papers covering pay-roll advice of Alfred F. Staunton, from the date of his employment on October 18, 1936, through his release on November 4, 1937, and ask you whether that is a true
2087 photostatic copy of all the pay-roll advices with regard to this man.

A. It is.

Mr. MOORE. I will file it as Respondent's Exhibit 25-A, B, C, D, E, F, and G.

Mr. HILTON. No objection.

Trial Examiner FORT. They will be received.

(The documents above referred to were received in evidence and marked "Respondent's Exhibit 25-A, B, C, D, E, F, and G.")

By Mr. MOORE:

Q. You are familiar with Mr. Staunton's work and activities?

A. Yes.

Q. If so, what sort of lineman is he generally called, or what is his job?

A. Well, in the parlance of the linemen, he was a floater.

Q. Was it so understood by everybody?

A. I don't know that there was any particular understanding about it, but any first-class lineman coming in who claimed to be a first-class lineman who came in to get employment, as long as I have been connected with the line gangs, has been classed as a floater.

2089 Q. Now, in the selection of the 13 men who were released, which was approximately one-tenth of your line force in the Norfolk division in March 1937, how was it determined as to the way in which those 13 men would be distributed among the entire force? You had first-class linemen, second-class linemen, third-class linemen, and helpers, did you not?

A. Yes.

Q. Now, how was the matter decided as to how the 13 should be distributed among all that force?

A. It was suggested by either Holik or Crafton or Brown, one of them, to just go ahead and pick some first-class, second-

2090 class, and third-class linemen as best we can, that is, in order to keep going on without any real disruption of the organization.

Q. That is just the point. Was it done with any other purpose in mind except to make the most orderly distribution possible, from the standpoint of orderly and economical operation?

2091 A. Sound operation; that was the basis of it.

2095 Q. Has there been any need to employ anybody to take the place of any one of these 13 men that were let out?

A. There has not. The only instance we have taken anybody back, or agreed to take anybody back, was in Suffolk, when in the summertime on the transmission lines we pick up youngsters to patrol the right of way; and two of the men let out in Suffolk, we agreed to take them back instead of taking on these students.

Q. That will be for next summer?

A. Just for this temporary work in the summer. They understand that they are on temporarily and are glad to get the work.

Q. In other words, has anybody been employed to take

2096 the place of any one of these 13 men?

A. No, no indeed.

Mr. MOORE. That is all, sir.

2097 By Mr. MOORE:

Q. Do you know how the pay roll of the electric department—I mean the number of men employed in the distribution department of the company, even today, after the release of these men, compares to what it was on January 1, 1936?

A. I think we have between 20 and 25 more men than we had then.

Cross-examination by Mr. WHITE:

Q. Mr. Throckmorton, in reference to the negotiation of the contract at Richmond on July 30th, and through August 1, 1937, you took part in the negotiation of the electric part of that contract, too; did you not?

A. I sat in on that, too; yes.

Q. As a matter of fact, the negotiations did not really begin until the second day; did they?

2098 A. I do not recall. I think we stated, Mr. White, sometime during the night of the first day.

Q. Don't you recall that the I. O. E. representatives requested that Mr. Brooks, Mr. Diggs, and some of the others be present at the conference?

A. I do recall that, and I know that Mr. Brooks was on his vacation, and I wired him and asked him to come back.

Q. Until Mr. Brooks did arrive, you did sit in and take part in the negotiation of the electric division contract?

A. Yes; I sat in on that.

Q. Now, you have referred to the overtime provision. What was the situation in the gas department prior to the execution of the contract with respect to overtime work?

A. Well, the principal thing was traveling time that these fellows talked about quite a bit. When a man was called out on emergency work, he was given the time he worked and two hours' traveling time.

Q. As a matter of fact, was not the situation out there that instead of paying straight time for overtime, compensating time off was allowed prior to the contract?

A. Yes; it was. That was carried over from the old N. R. A.

Q. During the course of the negotiations, it was finally agreed, was it not, that the general overtime provision applicable to the other departments would apply also to the gas

2099 department?

A. That was the agreement that was reached with the members of the I. O. E. in the gas department.

Q. With respect to the question of wages and hours, did not the I. O. E. present an alternative proposition, which provided either for shorter hours and higher rates or a little longer workweek with lower rates, making it, in any event, the same amount of compensation?

A. That was presented and discussed at quite some length, as I previously testified.

Q. Was it your impression there that the representatives of the gas department had a very definite idea of what they wanted and

intended to stick out for as much as they could get by a give-and-take process?

A. It certainly was, until the late hours of the evening.

Q. As a matter of fact, they presented to you a rather complete set of requests for a contract, did they not?

A. Very complete. I think, from the standpoint of detail, the proposal of the gas department covered that point to a greater extent than the others.

2104 Cross-examination by Mr. HILTON:

Q. Well, you knew——

A. Those were the only instructions I have ever given Walters.

Q. Well, you knew his instructions were to report anything of interest to the company?

A. Sure.

Q. And that would include labor organization activities among the men, would it not?

A. I would thing anything affecting the company would
2105 be of interest.

Q. Did you know Walters personally?

A. Yes.

Q. Was he ever carried on the pay roll of the V. E. & P. Co.?

A. No.

2106 Q. Now, after you received this information from Davis at the Reeves Avenue power station; did you call Mr. Holtzclaw and advise him of that fact?

A. I advised him of the telephone conversation I had had with Davis.

Q. And had you instructed Davis to be on the look out for such information as he had given you at that time?

A. No.

Q. What did Mr. Holtzclaw say after you gave him the information with respect to the Reeves Avenue power plant as of March 1937?

A. He told me to tell Davis to go ahead and have his conference with Parker and tell him to do what he wanted, but he couldn't operate on company premises or during the working hours of the men.

2107 Q. In other words, Mr. Holtzclaw said it was all right to organize the men; is that right?

A. So far as he was concerned, it didn't make any difference.

Q. At that time do you know whether or not the National Labor Relations Act had been declared constitutional by the Supreme Court of the United States?

A. I understand it was declared constitutional on the 13th of April.

Q. Now, this information that you got from Davis in regard to Parker—did you give that to Jones?

A. No.

Q. Did you tell Mr. Holtzclaw who gave you the information in regard to the Reeves Avenue plant?

A. I told him that Mr. Davis called me.

Q. Did you have any instructions from Mr. Holtzclaw to report such matters directly to him immediately following the receipt of such information?

A. No.

Q. Had you ever reported any matter similar to that before March 1937?

A. The only thing I reported to him was in either the winter of 1933-1934—I don't know whether it was the latter part of 1933 or the early part of 1934. Mr. Holtzclaw called me and told me that Mr. Clark was coming down, who had
2108 been in Richmond, to organize the transportation men.

Q. And was Mr Clark associated or affiliated with the Amalgamated Association?

A. I understood at that time he was.

Q. Do you know whether or not he did organize the street car operators at that time?

A. As far as I know he did not.

Q. At the time that this union was being organized or attempted to be organized in 1933 and 1934, do you recall
2109 men being discharged by the company?

A. No. Probably some were, because they were being discharged right along.

Mr. HILTON. I did not get the last part of your answer. Will you read that, Mr. Reporter?

(The Reporter read the last answer.)

By Mr. HILTON:

Q. And were they being discharged for any reason other than union activities?

A. For what?

Q. Were they discharged for any reason other than their union activities?

A. I never heard of a man being discharged by the company for any union activities.

2114 Q. Didn't Mr. Walters give you any information around March 1937, with respect to Parker organizing the men at the Reeves Avenue plant?

A. No.

Q. Did you have any conferences or discussions with any of the officials of the company after you had given that informa-

tion to Mr. Holtzclaw with respect to the Reeves Avenue plant organization?

A. I couldn't say definitely. I wouldn't be surprised if Mr. Holtzclaw didn't ask me if Mr. Parker had ever shown up.

Q. Do you know whether Parker ever did show up?

A. I understand from Mr. Davis he showed up about two weeks after the telephone call.

Q. Do you know whether any agreement was ever presented by Parker to Davis?

A. No.

Q. Did you learn anything further of the activities of
2115 Parker with respect to the Reeves Avenue Plant?

A. None whatever.

Q. Did you ever learn whether or not he was affiliated with or connected with the C. I. O. or the American Federation of Labor?

A. No.

Q. Did you ever try to find out about that?

A. No.

2117 Q. And when you received the petition, which is Board's exhibit No. 11, did you send that to Richmond?

A. Which one is that? Is that the big petition?

Q. That is the one to Mr. Cole, of the shop employees.

A. Mr. Carroll sent it to Mr. Jones.

Q. At your suggestion?

A. Yes. Well, it is the normal precedure and the way they handle things in the transportation department.

Q. You later received the petition containing 190 names which was presented to the company by Mr. Elliott, and it is in evidence as Board's exhibit No. 12. Do you recall that petition?

A. That was brought into my office by Mr. Bishop and Mr. Carroll.

Q. Did you submit that petition to the office in Richmond?

A. As I testified before, Mr. Carroll made a copy of it and sent it up to Richmond.

Q. When you received that petition did you call Mr. Holtzclaw or Mr. Jones, advising them of the fact that you had received it?

A. No.

Q. Did you send the petition to Richmond immediately after you received it?

A. I said Mr. Carroll sent it up to Mr. Jones.

Q. Mr. Carroll?

2118 A. Yes. I think he sent it up the same daye that he received it.

Q. At this meeting of May 20th were the petitions, Board's exhibits Nos. 11 and 12 which you have just identified, discussed?

A. I am pretty sure they were. I couldn't say definitely about that.

Q. Did you make any statement with regard to those petitions?

A. Not at that meeting.

Q. As I understand it, at that meeting it was decided that Mr. Holtzclaw would address the employees of the Virginia Electric & Power Company through their representatives on May 24th in Richmond and May 25th in Norfolk? Is that correct?

A. He was to address a group of employees in Richmond and in Norfolk.

Q. Was there any method determined upon at the meeting
2119 of May 20th as to how those emissaries or representatives should be chosen?

A. I know that they had instructions to go back and call together their departments and have their men pick such of their number as they wanted to come to the meeting.

Q. When you say "they" you mean the foremen instructed the men? Is that right?

A. No. In one case Mr. Holik, and in the other case, that is, in the case of the transportation department, I think Mr. Bishop told one of the members of the committee that had waited upon him with this petition. In the gas department I think, as I recall it, Mr. Diggs and Mr. Goodman notified the men in their department through their superintendents. Mr. Holik notified the line and the meter departments.

Q. And you do know that elections or selections of some kind were made by the men in the Norfolk Division?

A. I know that the men came up to the meeting.

Q. You mean the representatives or emissaries came to the meeting in Norfolk?

A. I don't know who they were or how they were classed; but men came up to the meeting in response to the suggestions of the superintendents.

Q. You mean this suggestion from the President to the men to send emissaries or representatives to hear the speech?

A. Yes.

2120 Q. Of course, it was not compulsory that they attend that meeting or send representatives?

A. Not a bit.

Q. Do you know whether or not the men in all the divisions of the Virginia Electric and Power Company were requested, or it was suggested to all of the men to select representatives to attend these meetings on May 24th and 25th?

A. In respect to the change in the meeting date from Tuesday to Monday, the different superintendents had planned to have a

meeting on Monday Afternoon, and they so advised that there would be a meeting in Norfolk on Tuesday. When the date was changed it was not possible in the case of the power station to get that whole group, or it was not possible to get that word to all of the employees, because they worked a three-shift proposition.

So Mr. Davis himself walked around and saw the heads of the different shifts and advised them that the meeting would be held at the general office at eight o'clock that night, and they could send whomever they wanted to send.

Q. Do you know if the men actually voted upon who they would have represent them at this meeting?

A. No.

Q. Do you know whether or not the men in all the divisions of the company, such as Norfolk, Richmond, Petersburg, Roanoka Rapids, did hold meetings for the purpose of electing
2121 representatives to attend the two meetings on May 24th and May 25th, 1937?

A. No; I don't know of my own knowledge.

Q. You have heard of it, haven't you?

A. I know that they were held. I know that the men were notified in Portsmouth, Suffolk, and Norfolk. So far as the others are concerned, I don't know anything about it.

Q. Were any men present at the meeting of May 24th that you addressed in Norfolk, from North Carolina?

A. So far as I know, there were not. Do you mean from the Carolina division?

Q. That is right.

A. So far as I know, no.

Q. I believe you stated that right about noon of May 24th it was decided to change the meeting to be held in Norfolk on the 25th to the night of the 24th?

A. Yes.

Q. How did you advise the representatives of that change in date?

A. I just got that through Mr. Holik. I told Mr. Brooks to pass it on, and I told Mr. Davis. And I just cited the instance of Mr. Davis who didn't have a chance to get his men together, and he had to go around and speak to the men in the different shifts, or the men in charge of the different shops.

2122 Q. Did you know who the representatives were at that time?

A. No.

Q. Did you know how many were going to attend?

A. Do you mean at eight o'clock? I mean, Mr. Hilton, do you mean at twelve o'clock that day?

Q. That is correct.

A. I don't think any meetings had been held then.

Q. No meetings had been held then?

A. No.

Q. Did you call Mr. Davis and the other supervisors and tell them to hurry up and hold their meeting because the speech was to be read that night instead of the following night?

A. I think I told Mr. Brown to notify that group, and I told Mr. Brooks to notify his group, and I told Mr. Sullivan, who was then manager at Portsmouth, to notify that group, and I told Mr. Rice in Suffolk to notify his group that the meeting had been changed, and to get the information out that it had been changed, and as soon as they could.

Q. Of course, Mr. Throckmorton, you don't know what the foremen told these men when the elections or the selections were made that same day, do you?

A. I don't really know that the meeting was held.

Q. You do not?

A. No.

2123 Q. You had no idea?

A. From my own observation.

Q. From your own personal knowledge you don't know whether any meetings were held in the Norfolk Division?

A. What was that question, please?

Q. From your own personal knowledge you do not know whether any meetings were held in the Norfolk Division?

A. I know that they were held. But you asked about what happened in the meetings. I didn't go to the meeting.

Q. Do you remember talking to any of the foremen and asking them how the selection had been made?

A. How the selection had been made?

Q. Yes.

A. No.

Q. You didn't attempt to find out how those elections had been conducted, if there were elections?

A. No, sir.

2124 Q. And you did not know whether or not the foremen had appointed representatives from various groups, did you?

A. I knew that from the electric department there would be a bunch up there.

Q. How did you know that?

A. So far as the rest of them were concerned, Mr. Holik told me.

Q. How did you know that from the electric department there would be a bunch up there?

A. Because Mr. Holik said he had this meeting. This was later on in the evening, after the meeting had adjourned at 4:30. He had talked with the men, and there would be men up there from the electric department.

Q. I believe you stated that there were approximately 70 men present at the meeting which you addressed in Norfolk.

A. Yes.

Q. Now, when did you receive the speech of Mr. Holtzclaw that you were to read that night?

A. About 7 o'clock that afternoon.

Q. You had seen that speech before, had you not?

A. No.

Q. Had you assisted in the preparation of that speech?

A. No.

2126 Q. Now, this meeting on the 24th, did you require the representatives to identify themselves before you permitted them to remain?

A. No.

Q. Did you tell the supervisor or foremen that they would have to leave the meeting if any of them were present?

A. No. I told them they should not have come in the first place.

Q. And then you read the speech, did you not?

A. I did.

Q. And some questions were propounded to the officials of the company at that meeting?

A. Yes.

2127 Q. Did you answer any questions.

A. I think so.

Q. Can you tell us just briefly and substantially the type of questions and answers that were propounded to you and that you answered at that meeting?

A. Well, I do not think any question was directed to me particularly. It was announced if the men present had any questions they wanted to ask, we were willing to answer. The preponderance of questions were "What shall we do," or questions of that character. "Do we have to join a union? Organize?" or questions of that character, to which the very definite statement was made that the company had no statement to make or answer in any way those questions except that they had nothing to say; it was entirely up to the men to do as they saw fit.

Q. Now, did you read Mr. Holtzclaw's speech at this meeting verbatim?

A. I did.

Q. Did you make any side comments on any of the provisions?

A. As I recall, I read it straight through without any comments at all.

Q. Did you read any of the paragraphs in that speech more than once?

A. I do not recall. I do not think I did.

2128 Q. Did you make any mention in regard to wages or hours or working conditions at that meeting?

A. No.

Q. And after you left the meeting the representatives remained, did they not?

A. Yes.

Q. And that meeting was held on company property?

A. On the sixth floor of the general office here in Norfolk.

2131 Q. Now, you met with Elliott, Ruett, and King about June 5th or 6th in regard to the petition, Board Exhibit 12, did you not?

A. I think that they were the ones. I think there were some others; I am not certain.

Q. And I believe, as you testified, that you jokingly asked them if they seriously expected 75 cents an hour.

A. Yes.

Q. As requested in their petition.

A. Yes.

Q. At that time did you have any discussion whatsoever with that committee other than what you have related?

A. So far as I recall, there was not.

Q. And approximately how long did that discussion last?

A. Well, we were in the office 15 or 20 minutes.

Q. And by "discussion," you were just having certain words; you were not negotiating with them, were you?

A. None whatever.

Q. Did you at that time have any authority to negotiate with any committee representing a group of employees of the V. E. P.?

A. No.

Q. And I believe about June the 13th that Elliott again came to you; is that correct?

A. I did not set definitely the date.

2132 Q. I did not say definitely; I say about June 13th.

A. About that, yes.

Q. And at that time did he tell you that he had been working hard to form an independent organization?

A. Yes.

Q. And did you at any time tell him that he should form a system-wide organization?

A. No.

Q. Did you make any suggestions of any kind to that effect?

A. None whatever.

Q. Did he tell you why he had been working so hard to form an independent organization?

A. He wanted to work it out and be the boss of it.

Q. He wanted to be the boss?

A. That is it.

Q. Did he say how much money he expected to get out of it?

A. No. He did not get into that part of it.

2139 Q. And the discussions or negotiations with respect to the closed-shop provision in the agreement lasted over a period of approximately four or five hours; did they not?

A. Yes; I would think they did.

Q. And that was two hours the first day and approximately two or three hours on the second day, or the night of the second day?

A. Approximately that; yes.

Q. Were you in favor of the closed-shop provision?

A. No.

Q. You were opposed to it?

A. I was at that time; yes.

Q. What made you swing over and agree to a closed-shop provision?

A. Well, there were lots of things in the agreement submitted that I did not agree to, that were tempered and finally agreed to.

Q. When the agreement was finally agreed upon, did the committee representing the company take a vote as to whether or not that agreement would be the agreement that would be reduced to writing and binding upon the company and the I. O. E.?

2140 A. I don't recall any vote having been taken.

Q. Well, did all of the members of the committee representing the management agree to the terms and conditions in the agreement as agreed upon on July 31, 1937, as a result of the discussions or negotiations?

A. I think everybody was in agreement as to the terms of the proposed contract at the end of the negotiations on the night of July 31st.

Q. And, as Mr. Smith put it, on the evening of the second day, that is, July 31st, there was some "horse trading" on the wages and the closed shop provision.

A. Yes; there was give and take on both sides.

Q. When this meeting started on the 30th of July 1937, did you see or did you request that the I. O. E. committee present any credentials or evidence showing that they represented a majority of the employees in the particular unit that they were claiming to represent?

A. No; that was handled by Mr. Holtzclaw.

Q. Was it handled by Mr. Holtzclaw or by Mr. Moore, your counsel?

A. Mr. Holtzclaw presided at the meeting, and he asked him a question.

Q. And what was that question that Mr. Holtzclaw asked Mr. Moore prior to the discussions or negotiations?

A. I could not give you the definite question.

2141 Q. Well, substantially.

A. But substantially the request that Mr. Holtzclaw made was that Mr. Moore verify the credentials of those representing the I. O. E., and to see if they were proper representatives for a bargaining agency.

Q. And as far as you were concerned, at that meeting you took it for granted, on the advice of your president or Mr. Moore, your counsel, that the I. O. E. was a bona fide labor organization, representing a majority of the employees in the unit that you were dealing with at that time?

A. That was the sense of the understanding; yes.

Q. Now, this agreement that you had discussed on July 30th, July 31st, and August 1st, was finally reduced to writing and signed on August 5th; is not that correct?

A. According to the records, yes. I was not at the signing of the agreement.

Q. Now, you do not know Everard Mann personally, do you?

A. I have seen him since he has been around here.

Q. Well, did you see and hear him testify on the stand at this hearing?

A. Yes.

Q. Did you have any knowledge prior to his testimony in this hearing as to why he was discharged?

A. Yes; because I advised Bishop to discharge him.

Q. Did you know that Bishop was talking about

2142 Everfard Mann at that time?

A. I don't recall the name at that time.

Q. And the reason that Bishop advanced for Mann's discharge was the fact that he had a poor record and that he had been disrespectful in the dispatcher's office of the company; is not that correct?

A. No; I stated that he was discharged—the real reason for his discharge was his disrespect.

Q. Disrespect?

A. Yes.

2144 Q. Now, did Mr. Bishop tell you whether or not there was a lot of men present when Mann referred to Bishop as "Bishop"?

A. There were ten or fifteen operators.

Q. Where was Bishop located with respect to these ten or fifteen men? By that, I mean were they all in a group?

A. He did not tell me that.

Q. Did you ask him about that?

A. No.

Q. Would that make any difference to you?

A. No.

Q. In the event that Bishop was back in the corner, say, and Mann came in and asked where Bishop was, would you consider that sufficient cause for firing Mann?

A. Not that just that way, no, but in the way it was brought to me it was sufficient cause to fire him.

Q. And did Bishop tell you exactly where he was when Mann made this statement?

A. No; he didn't think it was necessary.

Q. Did you think it was necessary?

A. No.

Q. How large is the dispatcher's office?

A. Well, that whole floor in there, that is, for operators and dispatchers, not including the cage, I would say
2145 is 60 x 40.

Q. That is a very large room, is it not?

A. A very good size.

Q. Is it usual or unusual for ten or fifteen men to be gathered in that room at the same time?

A. It is usual.

Q. And, of course, Bishop's duties would carry him into that room, would they not?

A. Yes.

Q. Had Bishop ever complained to you before this Mann incident that anyone working under him had referred to him, Bishop, as "Bishop"?

A. That was not the question at all. It was his disrespect.

Q. Well, can you answer that question, please?

A. I don't think he had.

2146 Q. During the time you have been employed by the Virginia Electric and Power Company have you known of any instance where any man has been fired for referring to his superior with outprefixing "Mr." to his name?

A. Not for that cause along; no, sir.

Q. I believe you stated that the first time you had learned of Mr. Mann's discharge was when Mr. Schauffler came to Norfolk and talked to you about it.

A. It was the first time I connected Mr. Mann with this incident that Mr. Bishop was saying to me. I knew a man had been discharged, but if his name was mentioned, it did not register.

2147 Q. So far as you know, if that incident had not occurred Mr. Mann would not have been discharged, would he?

A. No. Well, unless he did something——

Q. I mean so far as you know?

A. So far as I know, up to that time if that had not happened and he behaved himself after that he would probably still be working.

Q. When was it that you started the reduction in the number of employees in the Electric Department in the Norfolk Division?

A. The real reduction was made the latter part of March. Well, what was it? Was it March or April?

Mr. Moore. March 31st.

The Witness. March 31st.

By Mr. Hilton:

Q. 1938?

A. Yes; but there were men who quit who were not replaced prior to that time.

Q. At that time did the company have any method or policy in the event lay-offs were necessary?

A. Not other than to lay them off.

Q. In making those lay-offs did the company say senior-
2148 ity, ability, and so on, or did it consider those?

A. Of course, seniority was considered in any lay-off.

Q. Ability was considered first, was it not?

A. Primarily; yes.

Q. And then probably seniority?

A. Seniority had a great deal to do with it.

Q. And then family responsibilities?

A. Yes.

Q. And would you say after that would some contacts and ability to get along with fellow workmen?

A. I think that is generally considered as a quality that an employee has to have.

Q. Would you consider this last question I have asked you as part of a man's ability?

A. It could be so classed; yes.

Q. How long before March 31st, 1938, when you made these lay-offs, did you determine that lay-offs had to be made?

A. It was some time in February.

Q. Of the same year?

A. Yes.

Q. 1938?

A. Yes.

Q. With whom did you discuss the lay-offs in February 1938?

A. With Mr. Smith and Mr. Brown and Mr. Holik. The whole reason for all of it was the fact that there were no lines to
2149 be constructed. As to this rural extension program, the bottom had dropped out of it.

Q. Did the company through you, let us say, announce that it would have to make lay-offs?

A. No announcement was made.

Q. The first announcement that was made of any lay-offs was when the men were actually laid off? Is that correct?

A. No.

Q. You gave men notice of the lay-offs, didn't you?

A. We gave them notice in writing.

Q. And that was approximately two weeks before the date of their lay-off, which was March 31, 1938?

A. I think the records will show that the letter written to these men was dated March 22nd.

Q. That it was dated March 22nd?

A. Yes.

2153 Q. When you find it necessary to make these lay-offs you give instructions to your foremen under you that you need to cut down the crews?

A. Through Mr. Hollik and Mr. Brown and Mr. Crafton.

Q. And did you give them any instructions as to what men were to be laid off or what policy they should follow in cutting off any men?

A. No. At that time I told them that we had to reduce the force. They asked me to what extent, and I said approximately ten percent.

Q. Did you leave it up to the individual foreman as to what men he would cut off?

A. No.

Q. Would you finally OK the men that were recommended by the foremen to be cut off?

A. As to the men recommended to me, the recommendation came through Mr. Holik and Mr. Crafton and not from the foremen.

Q. In other words, the foreman of a truck would recommend that one man be cut off? To whom would Mr. Fowler, let us say, make that recommendation?

A. I don't know that it was handled in that way. I don't know whether they asked the foremen to recommend who to lay off. They went over the whole list themselves and they decided.

Q. Who were "they"?

2154 A. I said Mr. Brown, Mr. Holik, Mr. Crafton, and Mr. May. They were the men whose duty it was to get the names of those men to be laid off. The foreman had nothing to do with it; but probably they were consulted about it.

Q. So you really don't know whether or not any of the immediate foremen of these men were ever consulted with respect to those lay-offs?

A. Not of my own personal knowledge; no.

Q. Does Mr. May, let us say, have the authority to switch men around or make recommendations for hiring and firing in the V. E. & P. Company?

A. Yes. He does in the line department.

Q. I mean in the line department.

Q. Yes; he does.

2156 Q. Now, did you ever receive any complaints of any nature with respect to Judge's and Harrell's work while they were employed by the company?

A. I never did.

Q. And in the event that, say, you adopted a spread-out policy, would you be willing to take, say, Harrell and Judge back?

A. I would be willing to take Judge back. I have heard a lot of stuff here about Harrell not getting along. I would have to consider Harrell.

2157 Q. Mr. Throckmorton, did you read the bulletin posted by Mr. Holtzclaw with respect to the denial that Elliott had been offered a better job in accordance with the statement that appeared in the newspapers?

A. I did.

2158 Q. And I believe that is in evidence on two occasions, once as Board Exhibit No. 21. Was that the first knowledge that you had had that Elliott had been offered, or, say, according to Elliott's story, had been offered an increase?

A. That was the first intimation I had of it.

Q. Was that the first time you had any knowledge of it?

A. Nothing like that ever happened before.

2174 Cross-examination by Mr. LATHAM:

Q. Both Judge and Harrell have been employed rather recently, and they were enjoying a temporary status?

A. Yes.

Q. When they became linemen, third class, they were made permanent?

A. Judge became a lineman, third class, before Harrell did.

Q. He became a lineman, third class, before Harrell did?

A. As I recall the record, Judge became a lineman, third class, before Harrell.

Q. They both got paid—was their pay retroactive to the same time?

A. Yes; but there was no question about Judge. There was a question about Harrell.

Q. What was that question?

A. He was rated as a lineman helper. Under the agreement, only linemen, the men that climbed, were given this 5-cent flat increase.

Q. But you decided, then, that he was a good man, and you would raise him up to——

2175 A. It was through negotiation with the committee of the I. O. E. and those directly in charge of that department that this group of men were picked out as linemen, third class, in order that they get the 5-cent increase. There was quite a lot of dickering over a period of three or four days.

Q. He was considered a good workman, in order that he could be worked up into that class as of August 1st?

A. Probably so, at that time.

Q. Has his status changed with the company since the first of August?

A. Yes, it changed quite materially on April 31st—I mean on March 31st.

Q. I mean, as far as his record as a workman is concerned.

A. I never knew anything about him until this hearing started.

2183 By Trial Examiner FORT:

Q. When the gas department employees were insisting upon this 40-hour week were they suggesting that with a consequent reduction or loss in pay?

A. No. In their original proposal they had quite a high rate of pay per hour and a reduction in hours. I think they coupled the two together. In addition to that, they asked for two weeks' vacation with pay. And there were a lot of other things considered in there. We had quite a discussion of the 40 hour week because that we had in effect under the N. R. A.

2184 Q. They were not only asking for a 40-hour week but a 44-hour pay; they were asking for a 40-hour week with a good deal more than 44 hours' pay?

A. On that basis, Mr. Examiner, the 40 to 44 was not considered. It was a higher rate per hour that they were after. That is what they were after.

Q. 40 hours a week was what they were after or asking for at that time? And that would have been more than 44 hours' pay at the then existing rate?

A. Oh, yes. They were asking for some rates as high as a dollar an hour, I think.

2186 Q. When you left, what statement did you leave with?

A. I said, "You can stay here and do just what you want to do. We are going to leave."

Q. The same that was done at Richmond?

A. Yes.

Q. Was there any understanding prior to the meeting as to whether or not that would be done?

A. Yes; absolutely. Mr. Smith brought me that information. We were to read this thing, and if there were any questions that we could answer we were to answer them and then leave the meeting.

Q. You were to leave the meeting and let them go ahead?

A. To do whatever they wanted to do.

Q. That was the understanding between you and the Richmond office?

A. That is the information that was brought down to me by Mr. Smith from Mr. Holtzclaw, that that was the way we were going to conduct the meeting.

2199 E. A. BISHOP, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MOORE:

Q. Mr. Bishop, will you state your full name and address, please?

2200 A. E. A. Bishop, 226 West 27th Street.

Q. You are superintendent of the transportation department of the Virginia Electric & Power Company, the Norfolk-Portsmouth division, are you?

A. Norfolk division.

Q. Norfolk division?

A. Yes, sir.

Q. How long have you occupied that position, Mr. Bishop?

A. Twenty-one years.

Q. And that would carry you back to the days of the Virginia Railway & Power Company?

A. Yes; August, 1917. I came over here from Portsmouth.

Q. So you have continuously held the position of superintendent of the transportation department since August, 1917, of the Virginia Electric & Power Company and its predecessors?

A. Yes, sir.

Q. How many supervisors have you?

A. There are ten of them.

Q. How many dispatchers have you?

A. Four.

Q. At the present time, for example, how many bus and car operators, approximately, have you under you?

2201 A. I think that there is in the neighborhood of 282 or 283, or something like that.

Q. 282 or 283?

A. Yes, sir. That is car and bus operators.

Q. How are they divided as between car and bus, approximately?

A. The bus has a few more. I think there is probably 135 or 140 bus, and probably 120 or 125 or 130 car operators—a few more bus operators than car operators.

Q. Almost fifty-fifty?

A. Practically.

2203 Q. Now, Mr. Bishop, I ask you whether or not you know the reason why a man named Dunbar was released from your employment in the year, I believe, 1936.

A. He was released for staying off on a drunk.

Q. Was he off on this drunk for several days?

A. Yes, sir. To the best of my recollection; yes, sir. He never did show up. We had to send and get his badge and rule book and punch and things.

2204 Q. Was there any other reason whatsoever that accounts for his not being in the service of the company?

A. No, sir.

Q. You heard the testimony of Mr. Reutt, did you not?

A. Yes, sir.

Q. Do you recall that something was said in his testimony about your taking him in your automobile for a short trip one day in May of last year, shortly before this petition which has been filed in evidence here was presented, which petition, according to the evidence, seems to have been discussed at the meeting of May 11th? Will you just state briefly what did occur, as you recall it, in connection with your riding Mr. Reutt, if at all, in your automobile?

A. It was some time around the first of May. I used to go to lunch about 11:30 and Mr. Reutt was standing out in front of the motor conductors' room in the yard there, and I stopped my

car and asked him if he would go over to Granby Street.
2205 He came and got in the car. At that time the men were doing quite much talking around, and I asked Mr. Reutt what the men were talking about, and to the best of my recollection he says that he didn't hardly know, that they wanted to ask for something, and didn't know how to go about it.

I made the remark to Mr. Reutt—I said, "Why don't you call a meeting and have them to appoint a committee to wait on some of the officials of the company and let us know what they want?"

Q. Was it apparent that there was quite a bit of discussion going around the barn among the men?

A. Very much so.

Q. Do you very frequently pick up some fellow as you go to lunch or as you go home at night?

A. Almost any time; yes, sir.

Q. Was there anything unusual about that on this occasion?

A. No, sir.

Q. How long did you talk to Reutt?

A. I don't know. I don't think the ride would have been over two or three minutes—three or four minutes, maybe.

Q. Did you go just the regular route you usually go on your way home?

A. Practically; yes, sir.

Q. How many blocks did he ride with you?

A. About four or five blocks.

2206 Q. Now, Mr. Bishop, some days later, as I understand it, there was a meeting held there in the Y. M. C. A. at which a number of the men in your department were present. Were you asked by any of the men to go over to the meeting?

A. Yes, sir.

Q. Do you recall who it was?

A. I have a slight recollection that it was either Mr. King or Mr. Reutt. I don't know which one; maybe both of them.

Q. On the morning of the meeting did they ask you to go over?

A. Yes, sir.

Q. Well, did you go?

2207 A. I did.

Q. How long did you stay there and what did you say or do?

A. I don't imagine I stayed there over five minutes. They had all gathered there, and when I walked up they were all seated. I got up and made a little talk and turned around and walked out.

Q. What did you say, in substance?

A. I think this was on May 11th, at about 11 o'clock.

2208 To the best of my recollection—it has been a long time ago now—I think I made these remarks, that they had a

right to join any labor organization they wanted to, and that I hoped that they would get along all right. I think that is about all I said.

Q. That is the gist of what you said?

A. Yes; I didn't stay but just a few minutes.

Q. Had there been any discussion by any of the men?

A. None whatever.

Q. Did you then withdraw from the meeting?

A. I did.

2210 Q. I want to show you a paper. I show you this paper that has been filed in evidence here and marked "Board's Exhibit No. 12," which is called a petition to officials of the company, which is signed by some 190 men, referring to 75 cents an hour and this matter of regular runs being reduced, and so on. Is that a copy of the paper that was presented to you?

A. Yes, sir.

Q. What did you tell them when they did bring that to you?

A. I told them I would send it on through to the heads of the company, to Mr. Carroll and Mr. Throckmorton.

Q. Was that the substance of all that did occur on that date, the second time they came in?

A. To the best of my recollection, yes.

Q. Did you send it along?

A. I did.

Q. To Mr. Carroll?

2211 A. Yes, sir.

Q. Do you recall that several days later you were asked through the regular organization channels to attend a conference meeting in Richmond on May 20th?

A. Yes, sir.

Q. Did you hear Mr. Smith testify?

A. Yes.

Q. In order to save the details of repetition I will ask you whether or not your recollection agrees with or differs in any particular in substance from Mr. Smith's statement as to what did occur at that conference meeting in Richmond on the 20th?

A. I think Mr. Smith's statement is correct, to the best of my knowledge.

Q. As a result of that conference meeting do you recall whether or not you proceeded to have any discussion with your supervisors during the next day or two or three or four days?

A. I think it was the next day after I was in Richmond that I called in the supervisors and had a meeting with them, and I instructed them not to interfere with the men in any way, shape or form in the organization of any union that they wanted to organize.

Q. Did that first conference that you had with your supervisors occur before the meeting that Mr. Throckmorton held here in Norfolk on the night of May 24th?

A. I think it did; yes, sir.

2212 Q. Do you recall attending a conference in Mr. Throckmorton's office on May 25th?

A. The next day.

Q. After the meeting that was held on the night of May 24th?

A. Yes.

Q. Were you there with the other managers and superintendents?

A. Yes, sir.

Q. And principal operating assistants in the company?

A. I was.

Q. Did you hear Mr. Throckmorton's testimony this morning?

A. Yes, sir.

Q. As to just what did occur at that meeting?

A. Yes, sir.

Q. Were the instructions given at that meeting, as Mr. Throckmorton described, and were the facts, according to your recollection, completely stated by Mr. Throckmorton?

A. To the best of my knowledge.

Q. Did you have any further meeting with your supervisors as a result of that meeting on May 25th?

A. I am quite sure I did, but I can't remember just what date it was. It was two or three days afterwards, I think, that I had a conference with them again.

Q. What occurred at that second conference that you had with them?

A. Well, practically the same thing as at the first one.

2213 I gave them instructions not to interfere in any way, shape, or form with the men.

Q. And you simply emphasized it at the second conference?

A. Yes, sir; I did.

Q. Did you hear Mr. Elliott testify in this case?

A. Yes, sir; I did; most of it.

Q. You will recall he made some statements in regard to having some talk with you about June 1st in regard to going up to Richmond to see Mr. Holtzclaw and saying that he met you in the lobby of the main office building here in Norfolk and that you made some suggestion along that line.

A. Yes.

Q. Did you do anything such thing as that? Did you see him on that occasion?

Mr. Hilton. I object to your leading the witness.

Mr. Moore. I am asking if he did.

Mr. HILTON. You may ask him what he was doing around June 1st with respect to those men or that man.

Mr. MOORE. I wanted to ask him if he had any discussion with Mr. Elliott in the lobby of the office building. Now, just put that question any way you like.

The WITNESS. I do not recall ever talking to Mr. Elliott down in the company's main building, not at any time.

By Mr. MOORE:

Q. Did you have any talk with him at any time with
2214 respect to his going up to Richmond to see Mr. Holtzclaw? If so, what did occur?

A. The only thing I know about Mr. Elliott's going to Richmond is that he called me on the telephone about ten o'clock—and that must have been on the date you are talking about—and he said he wanted to go to Richmond and he needed five dollars. And I told him I had no way of getting any money down or advance him any money then. So he said to me that "Bus driver Parker is here and will let me have the money if you tell him."

So I told him to put Parker on the phone, which he did. And I told Parker to let him have the five dollars, which he did. And I paid Parker the five dollars out of my pocket when he came back and came into my office that afternoon.

Q. Did Mr. Elliott pay you back?

A. Yes.

Q. When?

A. Some time after he came back from Richmond. It was a few days.

Q. How many days?

A. I couldn't say. It was probably two or three days.

Q. According to your best recollection was it within two or three days?

A. I think it was; yes, sir. I am quite sure it was within two or three days.

Q. Is it something that happens frequently to make loans to
2215 A. Oh, yes. We make loans to them right along; that is, advances and loans too.

Q. Did he make any explanation to you as to what he wanted to go to Richmond about?

A. No, sir.

Q. I overlooked a matter there. May I go back for just a moment to the meeting of May 24th? After you came back to Norfolk from Richmond after attending the conference on May 20th and it had been understood that there would be a meeting held here in Norfolk, at first on the night of May 25th, which was Tuesday, Mr. Bishop, did you make any suggestion to any member of this

committee that had been in to see you a few days previously about attending the meeting here for the purpose of hearing Mr. Hoitzclaw or some official address them?

A. I notified some of the committee but I don't remember just who it was, whether it was Mr. Elliott or Mr. Ruett, or which one of them it was.

Q. But you notified them that there was going to be such a meeting?

A. Yes; I notified them that there was going to be such a meeting.

Q. Did you suggest that it would be well for some of them to go over to hear him?

A. I think I did; yes, sir.

Q. In connection with the meeting that was held in Rich-
2216 mond that same night, May 24th, did you do any telephoning or did you cause any telephoning to be done to communicate with any members of that committee from the men who had gone up to Richmond?

A. No, sir; I did not.

Q. Do you recall what you did when you found out that the date for the meeting in Norfolk was going to be changed from the night of May 25th to May 24th?

A. To the best of my recollection it was late in the afternoon that Mr. Carroll or someone called me on the telephone and said that they had changed the date and said that the meeting was going to be held in Norfolk the same night as it was in Richmond. So I got busy and looked around and notified some of the committee. I think it was Mr. King or Mr. Slaughter, or some of them; and I asked them to notify the rest of the committee.

Q. Did you know that anybody from the committee had gone up to Richmond?

A. No, sir; I did not.

Q. Mr. Bishop, you heard Mr. Elliott testify something about offer of a position that he said that you had made to him, first with a company and then with a union. Did you ever make any such offer as that to Mr. Elliott?

A. No, sir.

Q. Was there ever any discussion with him whatsoever
2217 about an offer?

A. Not to my recollection.

Q. Do you recall having any talk with him on the subject of an offer on the day that a bulletin was posted on the 24th of June, 1937, which has been filed in evidence here as Respondent's Exhibit No. 7, in which there is marked in pencil up in the left hand corner the words "Who said anything about a job in North Carolina." It is news to me too. Bob Elliott"?

Did you have any talk with him on June 24th about that particular matter?

A. To the best of my recollection I called Bob up into the office and asked him not to write on any order posted there any more. He said he was sorry he did it and wouldn't do it any more.

2218 Q. Did he intimate to you at that time that there had been any offer made by anybody for a job anywhere with the company?

A. He said it was all news to him. He did not know anything about it.

Q. Well, now, had he on several occasions talked to you of his own notion about the question as to what he was trying to do in the way of forming an organization?

A. Yes, he had. On several occasions he had talked to me about forming an organization.

Q. Had you undertaken to put any pressure on him as to what he should do or not do?

2219 A. No, sir.

Q. When the matter was brought up between you did you seek him out or not?

A. I did not.

Q. Now, Mr. Bishop, it appears that about this date, June the 1st, according to the record, a former employee by the name of Everard Mann was released from the service. What were the circumstances that brought about his release?

A. It was on May 27th, Friday afternoon, around 1:30, between 1:30 and 2 o'clock, I was sitting in the dispatcher's office. I think I had a newspaper and was looking at it. There were several men standing around. The dispatcher's office, I would like to explain how it is. It is a big room, and we have a counter that runs 20 feet this way and 30 feet across, and of course the dispatcher was right in the cage. They have sheets, and that is where they do the writing.

He walked up there and he says, "Anybody seen this guy Bishop around here?"

And Paul DeWick, the dispatcher, said, "Mr. Bishop is sitting right over there."

I at that time dropped my paper and I was looking right at him. He turned around and walked away.

After a few minutes I walked out of the dispatcher's office and walked into my office.

2220 Q. Now, what had occurred between you just before that, if anything, that seemed to give rise to some feeling of offense or ill will on his part? What had occurred between you?

A. Two or three days before he had come over and asked me for a loan of $50 to bring his sister from Philadelphia. He said she was in bad health and he wanted to bring her down to Ocean View for the summer.

I said I would take it up and see what I could do for him.

That was probably Tuesday or Wednesday of the same week. I had not had a chance to talk to Mr. Carroll about it, and he had not said anything to me about it any more.

I think that is what he was referring to. He came in there to find out if I had gotten the loan for him.

Q. What was the manner and the tone in which he did make this statement? Did it appear to be inspired by a feeling of anger or pleasantry or what?

A. He seemed to be very angry and sarcastic, the way he spoke. There were about ten or fifteen men standing around the counter, and they all looked at me and kind of smiled when he said this and walked away.

Q. Was it embarrassing?

A. Very much so. I had never heard it. In all my experience of handling men I had never heard my name mentioned that way by the men, or outside either, as far as that is concerned.

2221 Q. When he saw you there did he apologize to you?

A. He never said a word to me. He never spoke to me until I called him in my office. It was on a Tuesday, I think.

Q. If the remark was made before he saw you, there is no doubt about the fact that he did see you in a few minutes after that?

A. Absolutely, because I was sitting there, and I dropped my paper, and anybody could see me. It was open as this room here.

Q. Did the event occur in such a way that it caused jeering or comment among the men?

A. I understand the men commented on it very much afterwards, and I was told by another operator, when he got on a street car coming up to the car barn, he made the same remark.

Trial Examiner FORT. What the operator told him has no connection here, unless it occurred before his discharge.

Mr. MOORE. That is the point, before he discharged him, yes.

By Mr. MOORE:

Q. Just go ahead and state what was brought to your attention.

A. I think it was the next day this thing was talked around among the men. I got on a car to go to the car barn, and one

of the operators said he boarded his car and made the same remark, that he was going up to see that man Bishop
2222 to see if he had gotten the $50 from him.

Q. You mean Mr. Mann?

A. Mr. Mann, yes.

Q. Now, you did report the matter to Mr. Throckmorton?

A. I did. I think it was on Saturday afternoon when I was up here on Granby Street I met Mr. Throckmorton, and I told him the same story I told you.

2223 Q. Now, did you call Mr. Mann in to see you on the following Tuesday?

A. Yes, sir.

Q. What occurred when you called him in?

A. I told him that I could not use him any longer. He wanted to know what it was for. I told him it was for the remarks he made over at the dispatcher's office. He seemed to get very angry and said he knew better; it was not that.

Q. What did you say to him?

A. He turned around and walked out. I told him it was nothing else but that.

Q. Now, as a matter of fact, did you know that he had any union affiliations at that time, if he had any?

A. None whatever.

Q. Well, were you in any way influenced by the fact that he may have had such affiliations?

A. No, sir.

2226 Q. I simply want you to explain whether there was anything else other than disrespectful conduct that influenced you in your action.

A. I might put it this way, Mr. Moore: If he had not spoken the way he did in the dispatcher's office and had not had any more accidents, he probably would have stayed down there a long time. These careless accidents—they all have accidents, but what I mean is pure careless accidents.

Q. The immediate cause was the disrespectful conduct?

A. Absolutely.

Q. Now, in your thought on the subject as to what should be done in his case did you give consideration to the record he had had in part?

A. Well, that had some bearing on it, but not a great deal.

2229 Q. Do the records show the date on which, between April 12th and June 17th, Mr. Elliott was not working? Have you checked that?

A. Between what dates?

Q. Between April 12th, 1937, and June 17, 1937. During all of that time, was Mr. Elliott at work?

A. I think he worked probably 10 or 12 hours between that time.

Q. Between April 12, 1937—he had an accident that day, had he not?

A. On April 12th?

Q. April 12, 1937.

A. Yes, sir; that is the date he fell off the car.

Q. Then, I am just wanting to get clear in this record
2230 whether he worked any up until June 17, 1937. There is a period there of two months and five days. Now, how much of the time during that period did he work?

A. I don't know the exact amount of time he worked. He worked some little after the first of June, I think, up until just a few days—up until the 17th. There was a period between the 3rd and 12th of June when he was off 10 days. I remember that very well. He did work some time between the 1st of June and the third.

Q. Did he work as much as one whole day from April 12, 1937, to June 17, 1937?

A. I think he did. I am not sure about that, but I think he worked one or two days in there.

Q. Now, during all of that early period, he was off on account of this accident, was he not?

A. Yes.

Q. Do you recall the date that he called you up to make some report of himself as being able to work, after the accident?

A. I don't remember the date; no, sir.

Q. Approximately, what was the date?

A. I think it was around June 1st, to the best of my recollection.

Q. Well, he was out completely on account of the accident up to about June 1st; was he?

A. Yes, sir.

2231 Q. Then, did he c me in and report and ask for a leave of absence?

A. Yes; he wanted to get off 10 days. I think that started on June 3rd—the second or third—and ran till about the 12th of June.

Q. Now, what is the date that he came back to work the regular way?

A. That was June 17th, I think.

Q. You checked the time sheets and the records on this, have you not?

A. Yes, sir.

2233 Q. Mr. Bishop, did you ever threaten Mr. Elliott or any other employee, directly or through hint or insinuation, or in any other way, with loss of his job, or with discrimination with respect to his job, because of any union affiliation he might have or might desire to make?

A. No, sir.

Q. Mr. Bishop, you have a son named Myron, have you not?

A. No, sir.

Q. What is his name?

A. Warren Bishop.

Q. Did you at any time during the period here involved have any reports from Warren in regard to any union activity among the employees of the company?

A. No, sir.

2234 Q. Was Warren an employee of the company at all?

A. No, sir.

Q. Where is he employed?

A. At the Tidewater Terminal.

2235 Cross-examination by Mr. WHITE:

Q. Did any of the employees who were promoting the I. O. E. ever come to you and ask for advice or assistance in any way?

A. No, sir.

Q. As a matter of fact, did you know who were the men who were most active in promoting the I. O. E. in the transportation department?

A. I have some recollection of an election we had over there, and they elected Mr. Hough and Mr. Powers, I believe.

Q. You have a recollection of an election being held?

A. I think it was. They elected those two men, to the best of my recollection.

Q. Do you know where that election was held, or, do you recall?

A. Across the street, in the restaurant.

Q. It was not on company property?

A. No, sir.

Q. Mr. Bishop, did you ever suggest to Mr. Reutt that
2236 he would have to offset Mr. Elliott's efforts along the line of organization?

A. No, sir.

Q. Did you ever discourage Mr. Elliott's efforts to organize the employees of the Virginia Electric & Power Company?

A. I did not.

2237 Q. Were any instances of solicitations of membership into any union organization brought to your attention at any time between May 24, 1937, and, let us say, August 5, 1937?

A. I don't remember, Mr. White. There was so much going on that I don't remember what was going on. I didn't pay much attention to it.

2238 Q. You don't remember having it brought to your attention?

A. No, sir.

Q. Did you instruct the supervisors under you not to interfere in the efforts of the operators to do what they wanted to do with respect to union organization?

A. I did.

Q. So far as you know, were your instructions obeyed?

A. They were so far as I know.

Mr. WHITE. That is all.

By Mr. HILTON:

Q. Mr. Bishop, when did you first come to Norfolk?

A. I came to Norfolk in 1902.

Q. Where did you come from?

A. Lexington, Kentucky.

Q. In what kind of work were you engaged before you came to Norfolk in 1902?

A. I was operating a street car—a conductor.

Q. In Kentucky?

A. Yes.

Q. Did you get a job operating a street car in Norfolk when you came here in 1902?

A. I did.

Q. With the present company?

A. It was the Norfolk Railway and Light Company then.

Q. It was what?

2239 A. Norfolk Railway and Light Company.

Q. Did you come here because of any labor troubles or disturbance at that time?

A. I did not. They had some here at that time. I was working under a general manager by the name of E. B. Hathaway. He was traveling general manager of the Railways of America at that time, and for some reason they transferred him to Norfolk. As I say, we were working in Lexington then. And they had an assistant general manager there by the name of Hunt, and Mr. Hunt called ten of us up into the office one afternoon and asked us if we wanted to go to Norfolk, Virginia. He said Mr. Hathaway was done here and wanted him to send him ten good men. So he picked out ten of us and send us down here.

Q. Was there a strike on in Norfolk at that time?

A. We found out after we got in Richmond that there was a strike on.

Q. You scabbed in 1902, didn't you?

A. I ran a street car; yes.

Q. You helped break a strike, didn't you?

A. I suppose so.

Q. Did you continue to operate a street car until—when?

A. 1905, until the spring of 1905.

Q. With the same company?

A. No. I think in 1905 we changed the name. They changed so many times, and it went from Norfolk Railway and
2240 Light Company to Norfolk-Newport News Company, and from there to the Norfolk and Portsmouth Traction Company.

Q. Did these other nine scabs continue to work for the company at that time?

Mr. MOORE. I wish to especially point out in the record that it is not proper for the Labor Board Attorney to be using that phrase.

Mr. HILTON. If you object to it—

Mr. MOORE. It is your word, and I resent it.

By Mr. HILTON:

Q. You came here and operated a car during the strike?

Mr. MOORE. The witness cannot speak in his own behalf, but I resent your expression.

Mr. HILTON. If you objected to that in the beginning—But, of course, I certainly didn't mean anything personal by the term.

By Mr. HILTON:

Q. Did you and the other nine men who came from Kentucky to Norfolk to break this strike in 1902 continue to work for the company?

A. Yes. They worked here a long time. I am the only one left.

Q. You are the only one left?

A. Yes.

Q. What happened to the other men?

A. Most of them died, so far as I know.

2241 Q. When was it you were moved into a supervisory position?

A. In the spring of 1905.

Q. And you continued in that position until when? Was it until the present time?

A. Until October 1907.

Q. What happened in 1907?

A. I was made superintendent of the Portsmouth Division.

Q. And then did you come back to the Norfolk Division?

A. After staying over there ten years; yes, sir.

Q. Were you connected with the Norfolk Division in 1922, when the strike occurred?

A. I was. I was superintendent of transportation.

Q. Did you have anything to do with breaking the strike in 1922?

A. If you call it that. I had the cars operated.

2249 Q. Mr. Bishop, since you have been in charge of the transportation department of the Virginia Electric and Power Company in Norfolk you have used the services of the Railway Audit and Inspection Company, have you not?

A. I have used it some; yes, sir.

Q. And you knew Mr. Walters, of course, didn't you?

A. Yes, sir.

Q. And Walters made oral reports to you on matters of importance to the company, didn't he?

A. Yes, sir.

Q. And those matters of importance included, among others, labor activities among your employees, did they not?

A. He made very few reports on labor, as there was no labor condition here, except back in 1933 or 1934 there was a little, and some fellow came in here I think by the name of Clark; and he made a verbal report to me on that.

2250 Q. Did he report on Clark?

A. He reported he was here trying to organize.

Q. And Clark was connected with the Amalgamated Association of Street, Electric Railway and so forth employees, was he not?

A. I think so; yes, sir.

Q. Now, Walters was on your regular payroll, was he not?

A. No, sir; he was paid by the Railway Audit.

Q. And the company in turn then paid the Railway Audit?

A. That is right.

Q. For his service?

A. That is true.

2251 Q. What type of services did Walters render to the company?

A. He reported on practically everything that was of interest to the company, such as city council meetings, or any routes that were to be changed. We wanted to find out if the public wanted routes changed. He would make investigations and make reports to me on it. Or any other—most anything that concerned the company. He also checked cars and busses on Sundays and holidays all during the time he was here.

2256 Q. Most of the reports that you got were oral reports, weren't they?

A. Not from Mr. Brown.

Q. How about from Walters?

A. Most of them were, yes. Lots of times he would write me just a pencil copy. I would read it and tear it up.

Q. What kind of business was he carrying on with the city council in Norfolk on behalf of the V. E. P. Company?

A. Well, I don't know as he carried on any business. He would just go there and listen to what was said.

Q. What was he doing, spying on those meetings too?

2257 A. Not necessarily.

Q. You knew around 1934 that Walters was active in the Finkelstein strike, didn't you?

A. I did not know it. I heard that he was over there.

Q. Well, did you hear him make speeches over the loud-speaker system over there on behalf of the union?

A. No, I did not hear him.

Q. You never heard of that, did you?

A. No. I heard that he made them, but I did not hear him.

Q. I mean you knew or learned that he did make those speeches?

A. I heard some of the men talk about it, yes.

2260 Q. Dunbar was fired in what year?

A. 1936, I think.

Q. Are you sure it was 1936?

A. I think it was. I have his record here somewhere.

Q. Well, your best recollection is it was 1936, is that correct, Mr. Bishop?

A. I think so.

Q. And at that time did you learn that Dunbar and others were attempting to form any labor organization among the

2261 employees of the V. E. P.?

A. There was something said about it. There was something said about trying to organize a union, or something; so I called in several fellows and asked if they know anything about it, and they said they did not.

2263 Q. Now, I show you respondent's exhibit No. 26. Did you make that notation on respondent's exhibit No. 26 with respect to the firing of Charlie Dunbar?

A. Which note do you mean—this here discharge slip?

Q. That is right.

A. Yes, sir; I signed that.

Q. Did you fill that in at the time you actually discharged him?

A. Yes, sir.

Q. Did you have any other reason for firing him other than that?

A. I did not.

Q. And you had received a report of some kind from Walters in regard to Dunbar, had you not?

A. Not from Walters, no.

Q. From whom did you receive it?

A. I just picked it up around the men, talking around there, to the best of my recollection, and I called several of the men and asked them if they knew anything about it, and they said they didn't. They were over there, but even the man that ran the place came over to see me several days afterwards. He ran that bootlegging place there where they were all hanging out, drinking, and he said he wanted to come over and
2264 tell me that there was no union talked over there at all among the men. They were all in there drinking, and Dunbar owed him quite much money for whiskey he had bought during this time.

Q. Now, is it not a fact that you got information from J. D. King?

A. No.

Q. You did not?

A. King was one of the men that was hanging around drinking with him.

Q. Yes; I understand that, but did you not get the information from King, who was drinking with Dunbar?

A. No; I had King in the office at the same time I had these other fellows, about it.

Q. And what did you ask King?

A. I asked him whether they were talking any union talk around there, where they were drinking around there.

2266 Q. Did you send anyone with Dunbar for the purpose of getting information from him in regard to union organization activities?

A. I did not. I had Dunbar signed up to see me but he never did come to see me.

2269 Q. And you did not know that Dunbar was interested in union organization activities?

A. No, I did not. I didn't know it.

2270 Q. Now, why was it that Walters reported directly to you, Mr. Bishop, rather than to one of the officials of the company?

A. I have always handled all those checkers.

Q. Well, Walters was not a checker, was he?

A. He came here as a checker; yes, sir.

Q. Walters was a special operative, was he not?

A. He was after he checked here. About the time he came here we were taking over the busses of the Independent Bus Corporation, and he came here as a checker, and we wanted some in-

formation from the Bus Corporation; so I asked him to get it for me, and he did a very good job, and from then on we kept him on.

2271 Q. That was in connection with the jitney competition that you were having at the time?

A. That is right.

Q. And there was a Jitney Association and Walters was attending the meetings of the members of the Jitney Association and reporting on those things to the company, was he not?

A. I don't know whether he attended the meetings or not, but he just—I think the city council wanted the company to take the busses over, and we wanted to get some information as to what they were doing; so we just put him on the job.

Q. Were any written reports given to you by Walters, other than the ordinary checking report?

A. Yes, he used to write me a pencil report of what happened during the day.

Q. What would that cover, just generally now. I am not trying to pin you down.

A. It would depend on what it was. Week after week he would just give me a pencil copy saying "Nothing of interest for the client today."

Q. Do you know if during the time that Walters was employed by the company through the R. A. & I. he took an active interest in any labor organization activities among other plants, say, in Norfolk, Portsmouth, and Richmond?

2272 A. Not that I know of.

Q. Do you recall getting reports in March of 1937 in regard to the organization or the attempted organization of the Reeves Avenue power plant by an organizer by the name of Parker?

A. I never got any report of that.

Q. Never got any reports on that?

A. No.

Q. Did you ever learn that an organizer was trying to organize those men at the Reeves Avenue power plant?

A. I heard it through Mr. Davis, I think, that a man called on him by the name of Parker, who wanted to talk to him about organizing the men.

Q. And what labor organization was Parker connected with?

A. I don't remember.

Q. Do you know if it was the C. I. O. or A. F. of L.?

2273 A. No, I don't remember.

2283 Q. On April 26th, 1937, there was a bulletin posted on the board signed by Mr. Holtzclaw, was there not?

A. At what time?

Q. April 26, 1937.

A. I think so; yes, sir.

Q. And that bulletin is in evidence as Board's Exhibit No. 3. And I believe you have seen that bulletin, have you not?

A. Yes, sir.

Q. Were you consulted at all before that bulletin was prepared?

A. No, sir.

Q. Did you have anything to do with the preparation
2284 of that bulletin?

A. I did not.

Q. Did you talk to Mr. Carroll about that bulletin?

A. I did not.

Q. Do you know why that bulletin was posted?

A. I do not.

2287 Q. Now, on the occasion when you rode Reutt from the car barn—was it—to his home?

A. No; Granby and 20th Street.

Q. You did not take him to his home; did you?

A. No.

Q. Was that on the way towards his home?

A. Yes.

Q. Was it any out of your way to take him there?

A. No.

Q. Did you bring up the discussion of union organization at that time?

A. I don't think there was any question spoke about union at all. Just as I testified yesterday, I asked Mr. Reutt what the men were thinking about or talking about. To the best of my recollection, his answer to me was that they didn't know what they wanted and I suggested that he call a meeting and get together and see what they wanted, appoint a committee, or something like that.

Q. How was it that you happened to have that discussion with Reutt?

A. Just seeing the men standing around, talking in bunches.

Q. Did not any of the men report to you that the employees were discussing increases?

A. Not that I can recall.

2288 Q. What was the purpose in your telling Reutt to hold a meeting and elect a committee?

A. I just told him, why didn't he call a meeting and elect a committee to wait on us. I saw the men were all stirred up about it, and that was about the only way they could get

together I thought, was to appoint a committee to wait on some of us, about what they wanted.

2289 Q. Do you know whether or not Reutt did hold a meeting?

A. There was a meeting held. I don't recall whether he called it or not.

Q. That meeting was held in the V. E. & P. Co. "Y," was it not?

A. That is right.

Q. Did you get permission to use the "Y" for that meeting?

A. No.

Q. Do you know who obtained permission to use the "Y" for that meeting?

A. I do not.

Q. Did you suggest that Reutt post a notice to the effect that a meeting would be held in the V. E. & P. Co. "Y" in May of 1937?

A. I did not.

Q. How long was it after you had talked with Reutt
2290 that the meeting was held?

A. I don't recall. It must have been two or three days; maybe a week. I don't recall just how long it was.

2291 Q. Did you attend that meeting?

A. I did.

Q. Now, why did you attend that meeting?

A. I was asked to come up there and make a little talk by, I think Mr. Reutt and Mr. King, if I am not mistaken.

Q. Tell us, just substantially, what you told the men at that meeting.

A. To the best of my recollection, I told them that they had a right to organize and join any union they wanted to, and that I hoped they would get along all right. I think those are the words I used, to the best of my recollection.

Q. Did you make any suggestion as to the form of union they should join?

A. I did not.

Q. Whether it should be an affiliated or unaffiliated organization?

A. I did not.

2292 Q. Did you make any suggestion as to the C. I. O. or A. F. of L.?

A. None whatever.

Q. How long did it take you to make these remarks at that meeting?

A. I was not up there over three or four minutes.

Q. What did you do after you had completed your remarks?

A. Turned around and walked out.

Q Did you tell the men that they could use the hall after you left, for the purpose of discussing the formation of a labor organization?

A. I did not.

Q. You knew that that is what they were there for, did you not?

A. I don't think there had been any questions about a labor organization at all at this meeting, that I know of.

2298 Q. Now, do you know what occurred at that meeting after you left, Mr. Bishop?

A. I do not.

Q. Did you talk with any of the men on the following day after that meeting?

A. I think the committee waited on me the following day after that meeting.

Q. And was that the committee of Rentt, Elliott, and Hough, and others that called on you the next day?

A. Six of them; yes.

Q. Six of them?

A. Yes.

Q. What was the occasion of their calling upon you the day after that meeting?

A. I think I testified to that yesterday. They came up there and just requested an increase to 75 cents an hour, a 25-minute dinner relief, leather cushions for operators to sit on, and an increase to $3 a day for the relief association benefit, and I think they had a 7½-hour to 8½-hour day, to the best of my recollection.

2299 Q. Well, do you know of any reason why Mr. Holtzclaw then had to make a speech on May the 24th, 1937, to again inform the employees as to their rights under the National Labor Relations Act?

A. I do not.

Q. You had not received any request for information in regard to the rights of the employees after the bulletin was posted on April the 26th, 1937, had you?

A. I do not recall any.

2303 Q. Now, did you later learn that any meetings were being held by the employees of the transportation department for the purpose of forming any kind of organization?

A. I do not recall.

Q. Do you know whether or not the employees used the V. E. P. "Y" for any meetings after the one you just related?

A. After the first one, you mean?

Q. After the first one.

A. I think they had one more, maybe two more: I do not recall.

Q. Did they ask your permission to have that meeting in the V. E. P. "Y"?

A. No, sir.

Q. Did you attend that meeting?

A. I did not.

Q. Do you know if any of your foremen or supervisors attended that meeting?

A. I do not.

Q. Did you get any report as to what occurred at that meeting?

A. I did not.

2305 Q. Now, when was the first time you learned of an independent organization?

A. Some time in May, I think, or June the 1st, some time along there: it must have been around the 1st of June.

Q. Of 1937?

A. 1937, yes.

Q. And who advised you that there was an independent organization of the employees?

A. I do not know that anybody did. I just heard it talked around.

Q. It was generally known?

A. It was generally known among the men.

Q. Did any of the employees ask your advice as to whether or not they should join this independent organization?

A. I think there were several of them spoke to me about different organizations.

Q. Can you tell us the names of those men?

2306 A. No, I cannot.

Q. If you recall?

A. No. They always talked to me. I do not recall who they were.

Q. What information, if any, did you give them?

A. I told them it was their own affair: that they would have to work it out the best they could: that I would not have anything to do with it in any shape or form.

Q. Did you express any opinion one way or another in regard to the labor organization?

A. Not to any of the men.

Q. Did you express such an opinion to anyone else?

A. Not that I know of.

Q. Now, did you know whether or not Elliott was interested in this independent organization?

A. Well, I had reasons to believe he was.

Q. At that time you were on friendly terms with Elliott, weren't you?

A. I have always been, as far as I know.

Q. Now, did you ever learn of any disturbances of any kind that occurred at any of the meetings that were being held by the employees, say, from after the 20th, 24th of May, 1937, up to the first of June, 1937?

A. No.

Q. Were you given any reports of any kind of those meetings?

2307 A. No.

Q. Now, did you ever learn that Mann at one of these meetings just before May 27, 1937, had denounced the independent organization at an open meeting?

A. Mann?

Q. Mann.

A. No, sir.

Q. You never heard of that, did you?

A. No.

Q. How long had Mann been employed by the company?

A. I can not recall right now just how long. It must have been five or six months, maybe longer than that.

Q. I believe you stated that on May the 27th he came into the dispatcher's office when you happened to be there, is that right?

A. That is true.

Q. And previously he had requested a loan of $50 from the company?

A. That is correct.

Q. Well, that was not unusual for an employee to request a loan from the company, was it?

A. It was not.

Q. And when you were in this office, in the dispatcher's office, I believe you stated that you had a newspaper, is that right?

2308 A. Yes. I was sitting there looking at a newspaper.

Q. Did you have that newspaper in front of you?

A. Yes.

Q. Was it on a table or were you holding it?

A. I was holding it.

Q. Did you have it opened out full?

A. I think so, to the best of my recollection.

Q. And were you sitting down at the time?

A. I was.

Q. So that you were really concealed by the newspaper, were you not?

A. Well, I was sitting sideways to him; in other words, was sitting there with the paper this way [illustrating], and was over here [indicating].

Q. Was it customary for you to go into the dispatcher's off and read a newspaper as you were on this occasion?

A. I usually go in there most every day when I come ba from lunch. I just happened to pick the paper up.

Q. Then Mann walked up and said, "Where is this g Bishop?"

A. He said, "Have you seen that guy Bishop?"

Q. "Have you see that guy Bishop?"

A. That is what he said.

Q. And did you say anything to him when he made that mark?

A. I did not.

2309 Q. Did he talk to you at all in the dispatcher's office th day?

A. He did not.

Q. Did he then turn around and go out after he made th remark?

A. I think he went up to the Y. M. C. A. He went up in th direction.

Q. When was it you called him into the office for making th remark?

A. I think it was Tuesday morning, June 1st, he saw me.

Q. And this occurred on May the 27th?

A. He was put on the board Sunday afternoon; the board put up on Sunday night; and he saw me Tuesday.

Q. May the 27th was a Thursday, was it not?

A. Friday, I think.

Q. Well, I will show you a calendar, which indicates that it a Thursady [showing a document to the witness].

A. Friday was the day. It was the 28th. Wouldn't it on Friday?

Q. The 28th is Friday, yes.

A. Well, that is when it was, the time when I was sitting the dispatcher's office.

Q. You then put a notice on the board for him to report you on Monday, is that right?

A. That was put on the board Sunday—Sunday afternoon.

2310 Q. And he was to report in on Monday, is that right You put the notice up on Sunday, and he was to report you on Monday?

A. On Tuesday.

Q. On Tuesday?

A. Yes.

Q. Now, on Tuesday he did report to you, did he not?

A. I think so.

Q. And was it at that time that you told him that he was discharged because of the remark he had made about you in the dispatcher's office on the 28th?

A. It was.

Q. Was that the reason that you fired Mann?

A. It was.

Q. For making that remark?

A. It was.

Q. If he had not made that remark, you would not have fired him?

A. I would not; and if he had come back and apologized to me in front of those men, I would not have fired him.

Q. Did he ever offer to apologize?

A. He never did.

Q. Have you ever fired any other man for referring to you as "Bishop" other than Mann?

A. No. I never heard the word used before in my presence.

2311 Q. You stated you were embarrassed by reason of Mann's referring to you as he did. In what manner were you embarrassed?

A. Simply because all of these street car and bus men were standing around, and everyone of them looked right at me as if to say, "Are you going to let this thing get by?"

Q. They did not make any remarks to you, did they?

A. No.

Q. Had you ever referred to any of your superiors out of their presence without using the word "Mr."?

A. I might have. I wouldn't say that I have not.

Q. Would you say, for instance, "Well, I have to go up to see Jones" or "I have to go up to see Smith"?

A. I don't think so.

Q. And you consider that a sufficient reason for discharging Mann?

A. Yes.

Q. Did you talk to Mr. Throckmorton before you called Mann in to fire him?

A. I did.

Q. Did Mr. Throckmorton agree that Mann should be fired for that reason?

A. He did.

Q. Who actually cut Mann off the pay roll?

A. I suppose I am the one. I did not fire him. I made the recommendation and sent in the file.

2312 Q. Is he actually cut off the pay roll by the Richmond office?

A. When this authority slip goes in, yes—O. K.'d by Mr. Carroll and Mr. Thockmorton.

Q. Had you received any reports that Mr. Mann had been referring to you as "Bishop"?

A. I had.

Q. Do you know of that before this incident of May 28, 1937?

A. I did not.

Q. Who was it told you that Mann had been referring to you as "Bishop"?

A. I don't recall right now. I think it was Mr. Whitis. I am not sure about that.

Q. What was the occasion of his telling you that?

A. I got on the car to go home for lunch one afternoon shortly after and he spoke up and said that Mann had made the same remarks, and they were all talking about this same remark around there. He said Mann had made the same remark on his car. I think he said the day he came up there or in the dispatcher's office. I am not sure, but I think he said it was that day.

Q. How long after May 28th was that?

A. Probably the next day.

2313 Q. I believe you stated you do not recall discussing the union after June 1, 1937. Do you recall that?

A. No; I do not.

Q. Well, Mr. Bishop, did you discuss the union after May 1, 1937?

A. Not that I know of. You say May 1st?

Q. I mean June 1, 1937. But you did discuss the union during May 1937, did you not?

2314 A. I discussed it with the committee, I think, when they came up to see me.

Q. That was the only time you discussed the union; that is, when the committee was present?

A. Absolutely.

2331 By Mr. WHITE:

Q. Have you ever attended any meetings of the I. O. E.?

A. I have not.

Q. Do you know anything about the activities at those meetings?

A. I do not.

2332 Q. Have you ever received any report of what took place at those meetings?

A. I have not.

Q. Did you have a conference with Mr. Reutt between June 14th and June 26th, 1937, relative to the organization of employees of the Virginia Electric & Power Company?

A. Not that I recall.

Q. Do you recall having any conference with Mr. Reutt, in which you instructed him or suggested to him that he should cooperate with the Richmond group in forming a state-wide organization?

A. No, sir; I did not.

Q. Do you remember having any discussion with Mr. Reutt at all relative to any such matter?

A. I do not.

Q. Do you deny that you did have such a conference with him?

A. I do.

Q. Did you know anything about any union organization in Richmond among the employees of the Virginia Electric & Power Company between June 14th and June 22nd?

A. No.

Q. When did you first learn that there was any organization activity among the Richmond employees of the Virginia Electric & Power Company?

2333 A. I think it was around the first of June some time.

Q. And from whom did you learn that?

A. I just heard it talked around among the men.

Q. Where abouts?

A. Around the car—the motor conductors' room.

Q. Did any of the men come to you and tell you about it?

A. No.

Q. It was just a matter of general discussion?

A. That is all.

Q. Did you hear, during this time, of any C. I. O. organization activity among the employees?

A. You mean on June 1st?

Q. Yes.

A. No.

Q. You did not?

A. I did not.

Q. Did Mr. Edwards ever report to you any attempt on the part of any of your employees to organize the transportation employees in Norfolk with the C. I. O.?

A. He did not.

Q. So that if Mr. Edwards had anything to do with the matter you knew nothing about it?

A. I did not.

Q. If he interfered in any way or discussed this matter with any of the employees in any way, was that contrary to
2334 your instructions?

A. It was.

Q. If it now developed that he had interfered, would he be subject to disciplinary action?

A. He would.

2340 RAYMOND G. CARROLL, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

2341 Direct examination by Mr. MOORE:

Q. State your full name and address to the Reporter, please.

A. Raymond G. Carroll; 1036 Cambridge Crescent, Norfolk.

Q. Mr. Carroll, you are manager of the transportation department in the Norfolk Division of the Virginia Electric & Power Company, are you not?

A. I am.

Q. How long have you held that position?

A. Since February 1936.

Q. Now, without going into a lot of detail, for how many years have you been in the public utility business?

A. Going on 35 years.

Q. About 35 years?

A. Yes.

Q. Now, in the organization set-up in your department Mr. Bishop is the superintendent immediately under you, is he not, in charge of the actual running of the cars and busses?

A. That is correct.

Q. And in respect of your duties you would report normally to Mr. Norman Jones or Mr. Throckmorton, as the case might be?

A. Both of them, yes.

Q. Now, Mr. Carroll, without asking you to repeat what has been said by others a number of times, I simply ask you whether or not you were present at the Richmond conference on
2342 May 20th was Mr. Holtzclaw called.

A. I was.

Q. You heard Mr. Smith testify in regard to that, did you?

A. I did.

Q. Does your recollection check and agree with Mr. Smith's testimony as to what did occur there?

A. It does.

Q. Now, were you present at the meeting that was held in Norfolk on the night of May 24th?

A. I was not.

Q. Were you present at the conference that Mr. Throckmorton called on the afternoon of May 25th?

A. I was.

Q. Now, did you hear Mr. Throckmorton's testimony as to what were the points involved in the discussion and what were the instructions given at that May 25th conference?

A. I did.

Q. Does your recollection of what transpired check and agree with Mr. Throckmorton's testimony on that point?

A. It does.

2347 Q. Now, did you have any further conference with Mr. Elliott?

A. I did.

Q. What was the next time you saw him?

A. June 25, 1937.

Q. What occurred on that occasion and where?

A. Mr. Elliott called at my office with reference to Mr. Holtzclaw's bulletin of June 24th, which referred to the offer of a job to Mr. Elliott in North Carolina.

Mr. Elliott stated that he did not make that remark, and it looked to him as if someone was trying to get him into trouble.

He then stated that he himself was confused about all of the labor talk and would like to have me tell him what the company desired.

I replied, "Elliott I have been told that you are a college man. If so, you have a better trained mind than the average man,
2348 and you are in a position to think this matter out yourself and arrive at a decision. I am sorry that I cannot offer any advice, for the reason that the company has no suggestions to make."

Q. But he took the trouble to come clear up to your office to talk about that, did he?

A. Well, he appeared in my office on that date.

Q. Your office is here in the general office building, at Bousch Street, is it?

A. That is correct.

Q. Whereas he reports for duty at the car barn at 18th Street?

A. About a mile away.

Q. About a mile away?

A. Yes, sir.

2349 Q. I now hand you a paper which I will ask you to identify and state whether or not this accident report, which appears to be signed "Robert E. Elliott," dated November

1, 1937, came to your attention in the regular course of your duties?

A. Yes.

Mr. MOORE. I will file the photostatic copy as an exhibit, if I may, instead of the original.

Trial Examiner FORT. Is there any objection?

Mr. HILTON. No objection.

Trial Examiner FORT. It will be received.

Mr. MOORE. We will file this as Respondent's Exhibit No. 20 if you identify this photostatic copy as a true copy.

A. It is.

Q. Did that come to your attention in the regular course of business?

A. Yes, sir.

Trial Examiner FORT. It is received as Respondent's Exhibit No. 27.

(The document above referred to was received in evidence and marked "Board's Exhibit No. 27.)

By Mr. MOORE:

Q. I now hand you what appears to be a further report signed by Mr. Elliott in respect of that accident, dated November 26, 1937, and I will ask you whether this came to your attention in the regular course of your duties?

2350 Yes, sir. I have read this.

Mr. MOORE. We will file this as Respondent's Exhibit No. 28.

Trial Examiner FORT. It will be received.

(The document above referred to was received in evidence and marked "Respondent's Exhibit No. 28.")

By Mr. MOORE.

Q. I now hand you what appears to be a photostatic copy of three receipts signed by Robert E. Elliott, dated November 1, 1937, covering the receipt on that date by him of Virginia Electric and Power Company funds in the sums of $50, $10, and $15, a total of $75. Do you say you identify that as a photostatic copy of the original receipts in the company's records with which you are familiar, showing the receipt by him of those funds on that date?

A. Yes, sir.

Mr. MOORE. I would like to file that.

Trial Examiner FORT. Is there any objection?

Mr. HILTON. No objection.

Trial Examiner FORT. It will be received.

(The document above referred to was received in evidence and marked "Respondent's Exhibit No. 29.")

2352 By Mr. MOORE:

Q. Do you know whether or not the $75 that is referred to here in this exhibit was ever produced by Mr. Elliott, or what would represent that money?

A. It has not been produced.

Q. You will notice on this report that there are the names of two witnesses, Frank J. Williams, Portsmouth, Virginia, white, and Oscar Jennings, Church Street, Norfolk, Virginia, colored. Do you know whether or not any claim has ever been filed by the woman or whether she has ever communicated with the company?

A. She has not.

Q. Do you know whether diligent search has been made since to locate witnesses to such an accident?

A. A very diligent search was made.

Q. Have any such witnesses ever been discovered?

A. Not to my knowledge.

Q. And she has never made any claim?

A. No claim has ever been entered for either a personal injury or damage to the coat.

2353 Q. From your experience in the transportation business have you found it to be an unusual thing for a claimant under circumstances such as that not to make a claim?

A. It is the first instance of its kind I have ever known of.

Q. Is that the last day Mr. Elliott worked for the company, that is, November 1st?

A. I think so.

Q. Did you know that three days later the 90-day period expired under the I. O. E. contract? Did you know that?

A. I did.

Q. Do you know whether or not he knew it?

A. Yes; he knew it;

Q. What was done about his wages in view of those circumstances?

A. Mr. Elliott came into the company building at noon November 6th, which was a Saturday. I met him in the corridor on the 5th floor. It also happens that the 6th of the month is a pay day. Mr. Elliott asked me if I would give him his pay. Ordinarily I do not pay the operators. That is done by the paymaster. I asked Mr. Elliott if he had talked with Mr. Bishop, and he stated that he had.

I asked what Mr. Bishop had told him.

He said, "Mr. Bishop told me that my accident involved company funds, that he wanted to thoroughly investigate
2354 it, and to come back and see him." Mr. Bishop, the following week, Tuesday, the 9th, I think it was.

I asked Mr. Elliott if he intended to abide by Mr. Bishop's request. After a few moments of hesitation he stated that his money was due him and he saw no reason why it should not be paid to him now.

At that juncture I talked with Mr. Elliott about this accident and I asked him if he could give us a better description of the witnesses and their addresses in order that we might locate them.

So far as the colored man is concerned, he was unable to offer any suggestion. So far as Frank J. Williams, white, is concerned, he stated that in his opinion Mr. Williams was a traveling man because he had under his arm a small brief case such as salesmen usually carry, and he further thought that Mr. Williams could be located at a Portsmouth hotel.

He then described the woman whom he struck and whom he states had her shoulder bruised and her coat torn. He gave a brief description of her.

I then asked him how far away from Pine Beach Pier he was when he discovered the loss of his money.

He told me about one block, which would be approximately 300 feet.

I asked him if he went back to search for it. He stated that he did but he was unable to locate the passes or the money.
2355 He then asked me the third time for his pay check.

I replied that inasmuch as his accident involved company funds it would be necessary to thoroughly investigate it before his check was given to him. That ended the conversation.

2358 Q. Now it has been testified in this case that Mr. Elliott had had a previous accident on April 12, 1937, at which time the company funds were lost. Will you state from the calendar what day of the week that was?

A. Monday.

Q. Is there any difference in the days of the week with the bus and car operators as to the amount of funds that they have, ordinarily?

A. Yes, sir.

Q. What is the day on which they have most funds?

A. Monday.

Q. Why is that?

A. About 90 per cent of the weekly passes sold are sold on Monday.

Q. Do you know the amount of the company funds lost on that first accident of April 12th?

A. Well, approximately $125—within a dollar or two of that.

Q. You heard the suggestion from someone in the evidence that the company was reimbursed through insurance. Do you know whether that is so?

A. I have never been advised to that effect.

2359 Q. Well, to the best of your knowledge and belief, is it so?

A. I don't think it is so.

2360 Cross-examination by Mr. SPENCER:

Q. Shortly after coming to Norfolk in 1936, did you have a contest among the street railway and bus operators to determine which of your operators was the most careful and handled the passengers best?

A. We did.

Q. Who won that contest?

A. As I recall it, the committee awarded that to Mr. Elliott.

Q. And as a result of that, he got a prize of some six or eight shirts, did he not?

A. Yes, that is true.

2368 Q. Mr. Carroll, you have identified certain papers which have gone in as respondent's exhibits 27, 28, and 29, relating to an accident by Mr. Elliott. I ask you if that accident had anything whatsoever to do with Mr. Elliott's termination on November 3, 1937.

A. It did not.

2369 Q. Now, Mr. Carroll, you just said that this accident had nothing whatsoever to do with Mr. Elliott's discharge. Now, is it true that the reason for the discharge is that he refused to join the I. O. E.?

A. He automatically left the service of the company because he did not become a member of the I. O. E.

2372 By Mr. MOORE:

Q. Basing your answer upon your long experience in the business, I ask you whether or not the circumstances surrounding this accident report on November 1, 1937, was such as to cause you to know or have any firm opinion as to whether that report was made in good faith.

A. Mr. Moore, after reading that report I was very much astonished, and it occurred to me that the report was misrepresented.

Q. Were the circumstances such, surrounding the loss of that $75, that if Mr. Elliott had not automatically eliminated himself on November 4th by not joining the I. O. E. he would have been discharged anyway, because of those circumstances?

A. Yes, he would have.

2381 WILLIAM E. EDWARDS, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MOORE:

Q. Will you please state your name?

A. William Edwards.

Q. You are one of the supervisors in the transportation department of the Norfolk Division of the Virginia Eelectric Company, are you not?

A. That is right, sir.

Q. How long have you been connected with the company?

A. 12 years.

Q. That carries you back to 1925?

A. Yes, sir.

Q. What was your first work with the company?

A. Bus driver.

Q. How long did you work as a bus driver before you were appointed supervisor?

A. 12 months.

2382 Q. So you have been one of the supervisors for the last 12 years, have you?

A. That is right.

Q. Ordinarily what do you do in the discharge of your duties as a supervisor?

A. Check up on schedules, equipment and operators.

2387 Q. Mr. Edwards, do you recall whether or not you and all the other supervisors were called in by Mr. Bishop along in the latter part of May of last year and were given in-
2388 structions about what should be your attitude in regard to labor-union activities on the part of the men?

A. Yes, sir.

Q. What were you told about that?

A. He told us not to have any interference with the operators one way or the other in the organizing or in any union activities.

Q. You understood that those clearly were the instructions, did you?

A. I did.

Q. Do you recall a short time after you had received those instructions somewhere around the latter part of May or around the first of June any meeting of some of the car operators over at Moose Hall?

A. No; I don't recall any meeting at the Moose Hall. I was at Dr. Evans' house, which I was connected with the Modern Woodmen, and over to his house one night, and he looked out

and said "what are so many bus operators going into the Moose Hall for?" and I told him that I didn't know.

Q. Was that occasion the first information you had about any activity among the men with respect to forming any labor union?

A. I didn't know it then.

Q. You didn't know it then?

A. No, sir.

2389 Q. Up to that time had you noticed any gathering of the men in any unusual way from time to time prior to that time?

A. No, sir. They gathered around together, you know, at the car barns. We would go in and see three or four or five of them standing around talking; but I didn't know what they were talking about. I had nothing to do with what they were talking about.

Q. Were you here when one of the witnesses—I have forgotten which one it was—said that you were seen up opposite the Moose Hall one evening either the latter part of May or around the first of June? Were you here when that testimony was given?

A. Yes, sir.

Q. Did you hear that?

A. Yes, sir.

Q. Who was the man who testified to that? I have forgotten who it was.

A. Mr. Elliott.

Q. Will you please state just what did occur on that occasion?

A. As I say, it would be the night I would be at Dr. Evans' house, and I remember he said I was standing in front of the Moose Hall on Freemason Street putting down the names of the men. I don't remember anything like that.

Q. Did you do any such thing?

2390 A. No, sir.

Q. You did not?

A. I did not; no, sir.

2391 Q. How many employees of the company did you notice going into that Moose Hall building that evening?

A. I only noticed, maybe, five or six or seven—something like that. I don't know. I never kept any count of it or paid any attention to it. I didn't know what it was all about.

Q. And you made no report of it at all?

A. Not at all; no, sir.

Q. Did you stand on the corner or on the sidewalk there and loiter around at all?

A. No, sir; I did not.

2397 Q. Was there a sign up there in the Virginia Restaurant about a meeting being held there?

A. In both of them, both restaurants, the restaurant across the street, and the Virginia.

Q. What did that sign say about that meeting, in the Virginia Restaurant?

A. There would be a meeting there at such and such an
2398 hour. I don't just now recall what it was. It was a great pasteboard sign up, stuck up on the window of both of the cafes, outside, a great big sign that said there was a meeting at such and such an hour, but I don't recall just hour it was.

Q. Did it say C. I. O. or A. F. of L., or what kind of a union it was going to be?

A. C. I. O. it was. I think that is what it read.

Q. Well, did it say C. I. O.? Are you sure of that?

A. Well, no; I wouldn't be sure, but I think it was.

Q. You do remember seeing the sign in both restaurants about a meeting being held there?

A. That is right.

Q. Now, it has been testified here that at the time the meeting was held in the Virginia Restaurant, a great deal of the time that day you were sitting on the bench across the street. I wish you would state whether or not that was a fact, or what occurred.

A. It is not true; it is not true. I did not.

Q. You knew of the meeting, though?

A. I saw the signs of it; that is all I know.

2399 Q. Did you ever make any report at all to Mr. Bishop or anybody else in the management of the company about the names of any of the fellows who were attending the meeting in the Virginia Restaurant?

A. I did not.

Q. On the day that the sign said there was going to be a meeting?

A. I did not.

Q. Do you at times during May and June, and in the summertime, sit on the bench across the street there, watching the cars?

A. Well, I occasionally do; yes, sir, but not very often. We sit over there on the bench only when we are waiting for the car, when we leave Mr. Bishop's office for our regular duty, walking across the street there, and probably sitting on the bench.
2400 There are two benches there. It is for everybody to sit down, for the public, and I usually sit down waiting for the car. Sometimes there are fellows sitting on the benches there waiting for the cars, sometimes five or six and sometimes three or four minutes.

Q. Can you remember any day during June or July when you were sitting on the bench over there opposite the restaurant—you said there were two of those benches there—when you saw some of the men employed by the company going in and coming

out of the C. I. O. meeting or some other sort of meeting there in the Restaurant *Restaurant?*

A. I do not.

Q. Do you think you would have been impressed by it if you had been there and had seen that?

A. I think I would; yes, sir.

Q. Now, do you recall loitering there one night in June or July after this Blair High School meeting?

A. Mr. Moore, before you get to that, this is a public restaurant. It would be hard for me or anyone to tell who was going in and out for a meeting. It is a public restaurant. Everybody goes in.

Q. You mean this Virginia Cafe?

A. That is right. I couldn't say who was going into a meeting or who was not. It was a public restaurant.

Q. Do employees in the transportation department go in and out of there quite a lot?

2401 A. Certainly, day and night.

Q. Then, are we to understand that you did not observe any crowds of men going in there?

A. I did not. I don't remember. I don't know whether there was any crowd, at the time, or anything unusual. I never saw any different. They go in and out all day and all night. It is open all day and all night.

Q. Is that one of the regular eating places for the men that are employed, right there?

A. That is right.

Q. How close is the restaurant to the car barn property?

A. Next to the car barn, right opposite.

Q. The Crystal Restaurant is almost right across the street?

A. Yes.

Q. Do the men eat in that Crystal Restaurant, too?

A. They eat in both places.

2402 Q. Now, do you recall, some time after that meeting at the Blair Junior High School, when they seemed to have had a lot of argument over there, that you went into this restaurant, this Virginia Restaurant, and got into an argument with some of the men?

A. I walked in there one night.

2403 Q. What was going on when yo' walked into the restaurant?

A. Mr. Elliott and Mr. Hopkins and Smith was standing in back, opposite a table, talking in a conversation with some men. I walked in, and I asked the manager for a pack of cigarettes. Mr. Elliott spoke up and said, "There is one of the V. E. & P. rats," and of course Hopkins taken sides with him, and Smith, and he said, "We don't know what we are going to do with him yet."

Q. What happened with these bus operators when that occurred?

A. Well, one or two of them got up, and they said they wanted to know what was all this about, had a few words backwards and forwards, and I told them—I said, "I didn't like that remark that you made to me, and I don't know what you are referring to, but if there is anything personal between us, just one at a
2404 time walk out in the street, and we will settle it out of this man's business."

And that is all that was said, as far as I remember.
2405 Q. Was it much cussing that went back and forth?

A. Very much, yes.

Q. Who started the argument?

A Mr. Elliott.

Q. He started it by saying what?

A. That I was a V. E. P. rat.

Q. Were there any blows passed? Did you strike anybody, or did anybody strike you on that occasion?

A. We did not.

Q Did any of these men accept your invitation to step out in the street and settle it out there if they had anything personal they wanted to settle?

A. They did not.
2406 Q. Did you consider that you were dealing with the matter simply as a personal insult to you?

A. I thought I were.
2410 Q. Now, did you have any talk with Brush at all about a threat of Elliott and Hopkins about getting you into the penitentiary?

A. I did not.

Q. So far as you know and believe, was that all that ever occurred about any talk about getting you sent to the penitentiary? Was there anything further than this thing that occurred in the Virginia Restaurant that night?

A. That is all.

Q. Was it anything else than that that ever did occur, so far as you know, about any threat of getting you into the penitentiary?

A. It was not.

Q. Do you remember ever getting into any discussions or arguments with Mr. Hopkins about his membership in the C. I. O.?

A. No, sir.

Q. He testified here that you told him on one occasion that if he did not get out of the C. I. O. he was not going to last long.
2411 A. I did not know he was in the C. I. O.

Q. Well, did you tell him anything like that?

A. I did not.

Q. Hopkins was one of the men, however, in that restaurant that night where this hot argument occurred, wasn't he?

A. That is right.

Q. Did you ever have any discussion or argument with Mr. Smith, bus operator Smith, about his membership in the C. I. O.?

A. I did not.

Q. Jesse Smith?

A. I did not.

Q. You heard him testify, didn't you, that you told him on one occasion that if he did not get out of the C. I. O. he was not going to have a job very long?

A. I heard him say that, yes.

Q. Did you ever make any such statement at any time?

A. I did not.

2419 Cross-examination by Mr. HILTON:

Q. I believe you stated your principal duties as a supervisor were to check up on the bus schedules, and so on?

A. Yes, sir.

Q. Do you make any recommendations with respect to the hiring or firing of employees?

A. No, sir.

Q. Do you ever make any reports about the conduct or
2420 character of the work that the operators under you do?

A. What reports are you referring to?

Q. Do you ever check up on the efficiency of the operators?

A. Do we report a man, do you mean?

Q. Yes.

A. Yes, sir.

Q. To whom do you make those reports?

A. Mr. E. A. Bishop.

Q. Do you make any recommendations on them with respect to increases in rates of pay?

A. No, sir.

2422 Q. Could you identify any of the men you saw going into the meeting?

A. No, sir.

Q. Did you and Doctor Evans discuss all of these bus operators being present at that time?

A. No, sir.

Q. And did you remain in Dr. Evans' house the entire time while these men were going into the meeting?

A. No, sir.

Q. Did you come out onto the porch at all?

A. No, sir.

Q. How long were you in Dr. Evans' house that evening, Mr. Edwards?

A. I should say around an hour, or maybe 45 minutes. I don't recall just exactly.

Q. Did you see any of the men leave the Moose Hall while you were in Dr. Evans' house?

A. No, sir.

Q. So far as you know, the meeting was still going on when you left Dr. Evans' house?

A. I didn't know it was a meeting at the time.

Q. You saw all of these operators going in there, did you not?

A. That is right.

Q. Had any of them come out when you had left Dr.
2423 Evans' house?

A. No, sir.

Q. And that was just a coincidence that you were at Dr. Evans' house the evening when these men were going into the Moose Hall?

A. I go there right frequently.

Q. You didn't know in advance that these operators were going to be at the Moose Hall, did you?

A. No, sir.

Q. At that time you had received no instructions whatsoever with regard to your attitude and conduct with respect to labor organization activities, had you?

A. I had had my instructions from Mr. E. A. Bishop with regard to union activities.

Q. And were those instructions which you received around May 25, 1937? They were the instructions which you received around May 25, 1937, were they?

A. I think so; yes, sir.

Q. Were you called in in a group and given those instructions or were you given those instructions individually?

A. We were all called in together.

Q. What did Mr. Bishop tell you?

A. Mr. Bishop told us that we were not to take any part with the men in advising them or in any way in connection with any union activities in any parts, and we were not to take
2424 any part in it whatsoever.

Q. Did he say anything about giving information with regard to unions?

A. No, sir.

Q. Did he tell you to remain neutral?

A. Yes, sir.

Q. Did Mr. Bishop tell you at that time to stay away from union meetings?

A. Yes, sir.

Q. He told you that specifically?

A. Yes, sir.

Q. And, so far as you know, was there any occasion for his mentioning that in particular?

A. I don't know.

Q. Had you ever heard of any of the supervisors attending any union meetings or being around union meetings?

A. That is since this hearing.

Q. Had you yourself been present at any union meeting before May 26, 1937, when you received those instructions?

A. No, sir.

Q. You had not?

A. No, sir.

Q. Had you heard of any union meetings being held, Mr. Edwards?

A. No, sir.

2425 Q. You had not heard of any?

A. No, sir.

Q. The only meeting you heard of at that time was the meeting in the Virginia Electric and Power Company Y. M. C. A.? Isn't that right?

A. Yes, sir.

Q. Did you attend that meeting?

A. No, sir.

2426 Q. Did you inquire of any of the men as to the nature of that meeting to be held in the "Y"?

A. No, sir.

Q. Did you talk to any of the men after the meeting had been held, to find out what had occurred at the meeting?

A. No, sir.

Q. Then, that meeting in the "Y" occurred before this meeting when you saw the men going into the Moose Hall, did it not?

A. I say that I don't remember.

Q. You don't remember definitely.

A. No, sir; I do not.

Q. Now, were the instructions that you received from Mr. Bishop clear and definite in your mind?

A. Absolutely.

Q. And did any of the men ever come to you and ask for information in regard to labor organizations?

A. They did.

Q. Can you tell us specifically the men who came to you?

A. I cannot.

Q. Don't you recall even one?

A. No; I don't think I can even recall one.

Q. Was it during working hours that you were asked for this information?

A. I suppose it was, if I talked to any of them, because
2427 that is the only time I come in contact with them.

Q. And what is your best recollection as to the information that those men wanted?

A. Well, they would come and ask me and said they didn't know what to do, and was there any way—what I though was the best. I told them I had no right to advise them, and I couldn't advise them one way or the other; they would have to suit themselves.

2431 Q. Did Mr. Bishop ever request you to get information on the union?

A. No, sir.

Q. Did you ever volunteer any information to Mr. Bishop on the unions?

A. No, sir.

Q. Now, this occasion when the election was held, was that the time when Mr. Hopkins complained to you about your conduct while the election was going on?

A. I never heard nothing about that.

Q. Reutt, I mean.

A. I don't know. I don't recall anything that was said in connection with the election.

Q. Well, Reutt did talk to you at that time, did he not?

A. I don't recall that he ever talked to me or anything.

Q. Did Reutt ever talk to you and advise you that several of the men had complained of your conduct while this election was going on in July 1937?

A. No, sir.

Q. And did you, while the election was going on, attempt in any way to influence the men in their voting?

A. No, sir.

Q. Do you know what they were voting for?

2432 A. No, sir.

2494 JACK G. HOLTZCLAW, a witness previously called by the Board, and duly sworn, was recalled by the Respondent, and testified further as follows:

Direct examination by Mr. MOORE:

2498 Q. Now, do you recall the passage of the National Industrial Recovery Act, or the N. R. A., as we commonly called it?

A. Yes, sir; I do.

Q. Did the Virginia Electric & Power Company sign up with the N. R. A.?

A. They did.

Q. Do you recall the approximate date that that occurred?

A. Approximately August of 1933.

Q. At that time, did you deem the matter of such a character that it was decided to have you, as president of the company, communicate with the department heads, and they, in turn, with the cross section of employees in regard to the company
2499 going on the N. R. A.?

A. I did.

Q. Was that the first occasion that you had had since you became connected with the company to address employees or department heads on a subject which included, among other things, labor relationships?

A. That was the first time I had ever done so in my experience.

Q. I now hand you a paper, which I will ask you to identify, if you will, and tell us what that is.

A. That is a written speech which I read to a large group of employees in Richmond and to a corresponding group of employees in Norfolk, these two groups consisting largely of department heads and supervisors. The same paper was read shortly thereafter by various department heads to groups of employees.

Q. Both on the Richmond division and on the Norfolk division?

A. Both on the Richmond division and on the Norfolk division. The paper refers to the purposes of the National Industrial Recovery Act, the effect of the adoption of codes by our particular industry, the rights of employees under the National Industrial Recovery Act, and the probable effect upon the employees and on the company by the adoption of the various codes. That is the paper.

Mr. Moore. We now desire to file this as Respondent's
2500 Exhibit No. 36.

Trial Examiner Fort. Without objection, it will be received.

(The document referred to was marked "Respondent's Exhibit No. 36" and was received in evidence.)

The Witness. I might add that that paper was first read in Richmond on August 29, 1933, according to my records.

By Mr. Moore:

Q. And then you, yourself, read it in Norfolk to the department heads and supervisory people, and then, as I understand

it, the paper was, in turn, read by the department heads to the various groups, so as to get a cross-section of the employees in all departments of both the Richmond division and the Norfolk division.

A. That is correct.

Q. In that speech, do you discuss Section 7(a) of the N. R. A.?

A. I do, quite at length.

Q. Now, after that time, was there ever any change whatever in the attitude or policy of the management of the company with respect to relationships with labor?

A. None whatever.

Q. Do you know as a fact that that speech did obtain quite extensive circulation on the property among the employees?

A. It is my recollection that it received quite a substantial circulation.

2501 Q. So far as you know and believe, there was never any occasion to make any modification, and there was no modification, made in the policies as set out in that speech?

A. There was never any modification made in the company's policy as set out in that document—that speech.

Q. Now, Mr. Holtzclaw, did you hear Mr. Throckmorton testify in this case?

A. I did.

Q. Do you recall that he testified that in the month of March of last year, as he recalled it between the 1st and 15th of March, there was brought to his attention by Mr. Davis, who is superintendent of the Reeves Avenue power plant here in Norfolk the fact that a man by the name of Parker had called him on the telephone and asked him for an appointment to discuss with him the matter of a possible effort to organize employees of the company in the electric department of the Reeves Avenue plant? Do you recall that testimony?

A. I recall that very well.

2502 By Mr. MOORE:

Q. Will you state just what did occur in respect of the call from Parker on Davis and any communication that came to you in respect of it in March, 1937?

A. About the 15th of March, 1937, I received a call from Mr. R. J. Throckmorton, vice-president of the Norfolk division, who advised me that he had received a call from Mr. Davis, superintendent of the Reeves Avenue power plant, who had advised Mr. Throckmorton that he had received a telephone call

2503 from one Parker.

Q. Did you understand that it all occurred on that day?

A. I understood it all occurred on that day, and that within as I recall it, a very short period of time before Throckmorton telephoned me.

Q. What do you mean by "a short period of time", as you understand it?

A. A few hours.

Throckmorton advised that Mr. Parker had called Mr. Davis asking for an appointment at some time in the future to discuss with him the organization of the Reeves Avenue power plant employees, and Mr. Davis had asked Mr. Throckmorton for his advice. Mr. Throckmorton, in turn, told me about it, and I told Mr. Throckmorton to tell Mr. Davis to tell Mr. Parker that he was entirely welcome to proceed to carry out his plans in any way he saw fit to organize the employees of the Reeves Avenue power plant, but that it must not be done either on company property or on company time. I requested Mr. Throckmorton to transmit those instructions. It was about the 15th of March, 1937.

2504 Q. Now, did you have any further talk with Mr. Throckmorton or anyone else on that point?

A. I had no further talk with Mr. Throckmorton at all, and, so far as I was concerned, I never heard of the case again, as I recall.

Q. Did you receive any further report or any further communication from anybody else in regard to that visit except the call from Mr. Throckmorton?

A. I never received any other report, that I recall.

Q. Your recollection is that that was approximately the 15th of March?

A. My recollection is it was the 15th of March.

Q. Now, it appears in the evidence here that the decision of the Supreme Court of the United States upholding the constitutionality of the Wagner Act was announced on April 12, 1937, approximately a month after this talk that you had with Mr. Throckmorton, about the visit of Parker.

A. That is correct.

Q. Did the decision of the court, to your mind, give any occasion for any statement which would change any policy or announcement as to the company's attitude on the subject of labor relations?

A. The decision of the court gave no intimation to my mind of any change in the company's policy toward labor relations whatever.

2505 Q. Well, was it the intention to make any statement in the bulletin of April the 26th, or in your speech of May the

24th, changing the company policy, so far as that subject was concerned?

A. Not any change in the company's policy.

Q. Had you recognized ever since the NRA that the employees were to be free from any interference or coercion or undue influence of any kind on that subject?

A. I had.

Q. And, as I understand you, you made every effort to make it plain to everybody in the management and to the employees that that was so?

A. That is correct.

Q. And that is exactly what you did do in the Parker episode?

A. That is correct, sir.

Q. Now, Mr. Holtzclaw, were you in a general way familiar with the provisions of the National Labor Relations Act prior to April 12, 1937?

A. In a general way, a layman way, I might say, I was familiar with them, yes. I read them, particularly sections 8 and 9—7, 8, and 9.

Q. Now, what was the occasion and the circumstances that prompted you to post the bulletin of April 26, 1937?

A. The bulletin of April 26, 1937, in my mind, and in the
2565 minds of the other executives of the company, had a double purpose: We simply wanted to tell our employees again just what we told them in 1933, that under the new law, the Wagner Act, which had been declared valid by the Supreme Court, they had a right to form, join, or assist in organizing any labor organization—the right to self organization; we wanted to tell them that it was not necessary that they join any organization; third, we wanted to tell them that if they wanted to talk to us on any subject that was in their mind they could do so.

It was an informative bulletin which we thought wise to put out, in view of the fact that the nation was in more or less of an uproar, on account of the validation of the Labor Act. Employees did not know where they stood. We felt that our 3500 employees had not studied the Wagner Act—we knew they had not studied it, and even if they had, we felt it was wise to again state clearly the company's attitude.

Q. Now, did you have any knowledge, or did you believe that there was any dissatisfaction among your employees at the time that bulletin was posted?

A. We had heard of no dissatisfaction. The Reeves Avenue incident that had occurred, that was not among our employees: it was on the outside. We had no dissatisfaction, nor did we

receive at that time any request for collective bargaining.

2507 Q. Nothing, then, as I understand, ever did come out of the call from Mr. Parker?

A. Nothing ever developed of that, that I heard of.

Q. So that after you posted the bulletin of April 26th were you surprised or not when these requests developed a few days later for some wage adjustments and changes in working conditions?

A. I was very much surprised. All of us were very much surprised to find that in several places throughout the organization there existed what seemed to be dissatisfaction among employees with wages and working conditions.

2510 Q. How many separate working units are there in the Transportation Department of the company?

A. I would say that there are nine.

Q. What are they?

A. The Transportation Department, that is, the bus and car operators in Richmond and Norfolk, bus operators in Portsmouth and Petersburg and on the interurban bus line between Richmond and Petersburg, the shopmen in Richmond, Norfolk, Portsmouth, and Petersburg. So there are nine separate transportation department operations.

Q. In other words, there is an operating group in cars and buses in each one of these four cities, and then there is a shop group in one of the four cities? Is that correct?

A. That is right.

Q. Then there is the little short local bus line operating between Richmond and Petersburg?

A. Two bus routes operating between Richmond and Petersburg.

Q. From your knowledge of the conditions in the Transportation Department of the company, Mr. Holtzclaw, if you had granted this request which was evidenced in this Respondent's Exhibit No. 12, of increasing these wages on the Norfolk Car and Bus Division from 53 cents an hour to 75 cents an hour, what did you know would be the immediate effect upon these other eight units in the Transportation Department?

A. It was my very frank belief that upon granting such 2511 an increase to the Norfolk bus operators we would have had similar requests from the other eight operating divisions of the Transportation Department within 24 hours, or within a very short while.

Q. Had there been some adjustment in the wages on a general adjustment a short time previous to this request?

A. There had been an adjustment of three cents an hour in the wages of transportation operaters and some adjustment among some shop employees on February 1, 1937, just three months before this petition was sent in.

Q. That was a three-cent per hour increase?

A. Yes; an increase from 50 cents an hour for operators to 53 cents an hour.

Q. Until you had received these two requests from Norfolk, Board Exhibit No. 12, from the 190 car operators and bus operators, and this request from the shop requesting a 15-cent increase did you believe that the car and bus operators and shopmen had been satisfied with the adjustment that had been made in February?

A. I had never heard anything to the contrary.

Q. Did you believe they were?

A. I had believed that they were satisfied.

Q. Then you were quite surprised, I suppose, when you got these two requests?

A. I was quite surprised.

2512 Q. You testified on your direct examination that there were some 3 other requests not quite so serious in nature which did develop on the Richmond Division?

A. There were three other requests that I recall. They were not direct requests through petitions but they were verbal from the Transpertation Department in Richmond and from the Electric Department in Richmond for various changes in working conditions and some increase in wages.

Q. Two of these requests from Richmond as I recall it, as to the Transportation Division were comparatively minor, as to certain toilet facilities and a little more time for lunch, or something of that sort?

A. That is right.

Q. Were those two adjusted promptly?

A. I am quite sure both of those were adjusted promptly, or things were started to move so that they would be adjusted and so that things would be satisfactory.

Q. What did you do with a view to trying to deal with the other requests, particularly No. 12 and Exhibit No. 11? Exhibit No. 11 is the request of the shop men in Norfolk and Exhibit No. 12 is the petition with the 190 names of the men in the Transportation Department. I am referring primarily to Exhibit No. 12. What did you do with a view to trying to deal with that situation?

2513 A. As I said, we were very much surprised when we received this petition from the employees in the Transportation Department at Norfolk asking for any such in-

crease in wages. We were also surprised that from several other departments of the company there had come requests for increases or for changes in working conditions. It was a matter which disturbed us quite a lot and to which all of us gave very serious consideration. It was impossible for us to have granted those requests of the Norfolk Bus and Street Car operators, not simply by virtue of the fact that they were asking more than we could grant but because to have granted their requests would have meant the immediate demand from the eight other divisions of the Transportation Department for at least similar concessions or perhaps greater concessions.

As I say, it disturbed us. We thought about it for a period of perhaps ten days as to what action we should take. We did not feel we could bargain collectively with any small group without, as I said before, bringing about chaotic conditions.

Q. Did you call the conference of May 20th with any cut and dried program or was it with a view to laying the cards on the table with the department heads as to what had developed and advise and consult with them?

A. After giving consideration to this petition for several days we decided we would have a meeting of the department heads of the entire company in Richmond to discuss this
2514 bulletin and the general situation.

Q. You mean the petition?

A. I mean the petition and the general situation. I called together all department heads. I believe there were 39 or 40 in there at the John Marshall Hotel on May 20th, and we discussed with them the Wagner Act, the status of the employees under the Wagner Act, and discussed with them the receipt of this petition and the receipt of verbal requests that had been received from other department of the company's operations, and I asked for their advice, based upon which we, the executives of the company, might reach some reasonable and fair conclusions.

Q. Was it at that meeting of May 20th that the decision was arrived at to hold these two meetings of May 24th at Richmond and May 24th at Norfolk?

A. After discussing this matter at the May 20th meeting for some length of time it was decided that the best thing to be done was to call meetings in the very near future of employees or representatives of the employees and carry the story to them.

So at the meeting on May 20th we decided to hold a meeting in Richmond on May 24th and the meeting in Norfolk on May 25th, each one of which I would personally address and tell the employees of their status under the Wagner Act and also tell them of the company's attitude in every respect.

2515 So the meeting of May 24th was set and designed at that meeting on May 20th and had two very clearly defined points.

We recognized that dissatisfaction existed among the employees by the receipt of those requests; we recognized that the most valuable asset a company such as ours can have is satisfied employees, and our efforts over many many years has been with that point uppermost in our minds. We decided that if satisfaction was to be complete and cover the entire organization that it would be necessary that the men themselves sit with the executives of the company in arriving at the terms under which they would work in the future.

The speech made at the meeting of May 24th, which was designed at the meeting of May 20th at the John Marshall Hotel, was simply an invitation to the men to meet with the president of the company and to hear what he had to say.

Q. Was it your desire to direct or encourage the men to form any kind of organization if they did not want to have one?

A. There was never any desire on my part or on the part of any executive to direct the men as to what they should do about forming an organization. If they wanted to form an organization, well and good; if they did not want to form an organization, it was their right to do whatever they saw fit. But no attempt was made on my part or on the part of anybody, so far as I know, to direct them as to what they should do for the
2516 purpose of getting satisfaction on the demands they had made.

Q. Was there a desire on your part or was there any effort made, so far as you know and believe, to steer them as to the kind of organization they should have?

A. There was not.

Q. Did you have in your mind any other objective than to try to deal with these requests in an effort to satisfy the employees and to make the employees who were affected feel that the matter had been set at rest in a fair and just manner?

A. That is the only idea we had in mind.

Q. At the May 20th meeting were any instructions given to department heads or their assistants who were at that meeting with respect to any restriction or limitation that should be passed along to the rank and file of employees as to the number that should come to your meetings on May 24th and May 25th?

A. The department heads were requested to call their groups together and advise them of the meetings of May 24th and May 25th; but there were no restrictions placed upon them as to the number that might attend. They were instructed they were to

have nothing whatever to do with the selection of the men but simply call them together and advise them Mr. Holtzclaw was going to talk at such a time and place, and if they saw fit to send representatives they might send them.

2517 Q. At the meeting of May 24th in Richmond which you addressed will you state just in your own way, Mr. Holtzclaw, what were the circumstances concerning whatever 2518 statement you made to that meeting in respect of any increase or adjustment of wages to be effective June 1st?

A. Just as I walked onto the platform in Richmond the night of May 24th I arrived at the decision in my own mind that I would make such an announcement.

I read the speech which has been discussed during the hearing quite a lot. I read parts of it twice and then I made a few remarks concerning it, concerning which I testified on direct examination. Then I stated to the employees that if as a result of any bargaining that might be carried on in the future any wage increase should be granted that it would be effective as of June 1st, which at that time was one week in advance of the time I was talking.

I made that statement simply because of the fact I did not want employees of the company to be forced or rushed into arriving at their conclusions as to what type of organization they wished, if any.

The Virginia Electric and Power Company is a very scattered organization. I just testified that there are nine divisions of the transportation department. There are perhaps some 30 or 40 divisions of the electric department, and there are several divisions of the gas department in Norfolk. There are 3500 employees, and to get those people together of one mind as to what sort of bargain agency they wanted was not something that 2519 could be accomplished in a short while, regardless of the union they decided to join or whether they decided to join none. So in order for it not to be necessary for them to make up their minds over night I wanted them to feel sure that whatever wage increase was granted, if any, as a result of the bargaining we did would be effective as of June 1st. And whether no bargaining was done, whether the company voluntarily should increase wages, any wage increase granted would be effective as of June 1st.

2521 Q. Now, in making the statement that you made on May 24th, in regard to whatever adjustment of wages that might be made in order to satisfy the employees who were making the requests, that is, that it would go into effect on June 1st, did you make any definite promise that there would be any wage increase on June 1st?

A. Not in the slightest, nor did I say anything that could be taken by anyone to mean a promise that there would be.

Q. Did you make any commitment of any kind in respect to a definite increase on June 1st?

A. None whatever.

Q. Did you make any promise that was contingent upon an event in the way of a real wage increase on June 1st?

2522 A. I made no promise of any wage increase whatever. I simply stated to the assembled group that if there were a wage increase as a result of whatever type of negotiations might be discussed or might come out in the future, that what wage increase was granted would be made effective as of June 1st.

2526 Q. After the May 25th meeting did you have any knowledge as to what activity or what sort of activity was going on among the employees of the company in connection with the matter of forming any union or unions throughout the property?

A. I did not after the May 25th meeting. The evening of May 24th, when I finished my speech, I left the hall and left the employees there. I do not know how long they stayed, and I did not know anything more about what they were doing until I was presented with the contract on July 19th.

Q. Well, did you or anyone else in the management with your authority make the slightest effort to check up and find out what was going on among the employees?

A. Not that I know of. If anyone did it, they directly violated the instructions. I do not know of anyone that did it.

Q. Now, do you recall that in the interval between May 24th and the date you received this proposal from the I. O. E., July 19th, you had a conference with Mr. Robert Elliott?

A. I do.

Q. Could you now just state briefly what occurred at that conference and the date of it?

A. The date of the conference was June 15th. It seemed
2527 that Mr. Elliott had called in Richmond on June 14th to see me but had found me out and had talked to Mr. Jones. Mr. Jones had made an appointment for Mr. Elliott to see me the following morning, June 15th. He was announced and came in and told me that he was the representative of a group of transportation department employees in Norfolk and wanted to know if the company would bargain collectively with it—would recognize this group and bargain collectively with them. I asked Mr. Elliott if he had heard my speech of May 24th. He advised me that he had heard it—that he had heard me make it in Richmond.

Q. Do you recall that he was in Richmond? Did you know that he was in Richmond?

A. I did not know that he was in Richmond. If I had known it, I do not recall.

Q. Had you known Mr. Elliott?

A. I heard of him but I had never seen him. I asked him if he heard my speech on May 24th. He said he did. I said that was the fairest statement that I could possibly make of the company's attitude. I said, "We could not, in fairness to the company, or to the employees, deal with a small group like
2625 the transportation department employees in Norfolk because it would simply mean a condition where the executives of the company would be dealing with small groups all over the property and would mean a chaotic condition in negotiations; that therefore the company could not deal with—would not deal with—this small group representing the transportation department employees in Norfolk."

I think I made it very definite that the company would not deal with them. We started discussing other subjects. Mr. Elliott mentioned to me that he was—the question first came up—I asked Elliott how long he had been working for the company, and he said he had been with the company three years; that he had worked twice with the company before on vacation, while he was at Randolph Macon. He said that he had several other jobs, one good job in North Carolina that had petered out, and during the depression it was awfully hard for a man to get a good job, which everybody recognized. For perhaps five minutes we sat there after I refused to negotiate with the Norfolk transportation department alone. He discussed the matter of how hard it had been to get a job during the depression, and the conversation was over.

Q. Was there anything said whatsoever by you in the way of offering him a job, hinting or intimating any change in his position with the company?

A. Nothing whatever was mentioned by me in connec-
2629 tion with his position with the company, or suggesting a job of a different character with the company, nor was anything said about—which I believe he testified to—about going back to Norfolk and laying low. Nothing of that character was said by me.

Q. How did the interview close? Was there any abrupt ending to it or unpleasant or not?

A. I do not recall that it was abrupt at all nor unpleasant. It was very definite that the company would not—could not—recognize his small group of employees. It was just as definite

as I could make it. I do not recall any abrupt ending nor unfriendly ending.

Q. I call your attention to a bulletin which you caused to be posted, which is filed here as Board exhibit No. 21, dated June 24, 1937. What were the circumstances that caused that bulletin to be issued by you?

2530 Q. I would like to refer you to an exhibit that has been filed here as Respondent's Exhibit 11, particularly one page of it which is an excerpt from the Richmond Times-Dispatch of Thursday, June 24, 1937, and I ask you to read into the record the statement that appears in that paper in connection with the remarks that you were just making.

A. (Reading:) "At this meeting, Thomason said, Mr. Elliott charged he had been offered a job in North Carolina with a salary of $350 a month to 'turn over his organization to the company and leave Norfolk.' Mr. Elliott, he said, 'told the meeting he replied to this offer that he would not betray the confidence the men placed in him when he formed the union and rejected the offer.'"

Trial Examiner Fort. Just a minute. Is it necessary to

2531 read it all over again? We have it as an exhibit.

Mr. Moore. Just one little paragraph. That is all there is.

By Mr. Moore:

Q. Now, had there occurred, in the conference that he had with you, any basis whatsoever for a statement of that sort to have been issued?

A. None whatever. As a result of the appearance of that article in the Richmond Times-Dispatch I caused to be published on the bulletin boards throughout the property the bulletin dated June 24th denying that any such statement had ever been made to Elliott.

Q. Did you consider the statement to be a very serious matter reflecting on the integrity of the management of the company?

A. I considered that any such statement reflected on the integrity of the management and the department heads, and therefore I denied it on the very day it was published as vehemently as I knew how.

Q. Mr. Holtzclaw, there has been filed in evidence here a letter dated July 19, 1937, from the Independent Organization of Employees of the Virginia Electric & Power Company, signed by Eugene Underwood, Board Exhibit 5, copy of your reply of July 21st, 1937, Board Exhibit 6, and copy of Mr. Underwood's reply of July 27, 1937, Board Exhibit 7, as a result of all of which

2532 it appears that a conference was set for July 30, 1937, for the purpose of bargaining collectively with the representa-

tives of the Independent Organization on the matters referred to in their proposal. Did you take any steps prior to the July 30th meeting to satisfy yourself as to the character of the organization which Mr. Underwood claimed to represent?

A. I requested the legal department, in charge of yourself, to make a very careful investigation to determine if the organization represented the proper collective-bargaining agency.

Q. Now, you recall there was attached to the letter of July 19th an exhibit showing numbers of members.

A. That is correct.

Q. You recall that you specifically requested that counsel for the company take up the matter with counsel for the Independent Organization to check up all legal details involved prior to the meeting of July 30th?

A. That was included in my instructions, yes.

Q. Do you recall that at the beginning of the negotiations, or just prior to the negotiations of July the 30th, that the management group did have before them the constitution and bylaws of the I. O. E. and the set of membership or application cards that were exhibited?

A. I do.

Q. And were you advised that in the opinion of the
2533 company's counsel the organization had been properly set up and constituted as a proper bargaining agency for the employees?

A. I was so advised by counsel before I permitted the meeting to proceed.

2535 Q. Mr. Holtzclaw, during the month of April 1938, having in mind that there was a provision in the contract of August 5, 1937, that that contract would automatically renew itself for another year on June 1, 1938, if a notice of desire to terminate was not given by either party to the other, were negotiations taken up by the I. O. E. with the Company looking to the renewal of the agreement, with certain modifications?

A. Negotiations were taken up. As I recall it, on April 29th, the first meeting of the two committees was held in the executive offices in Richmond, at which time the demands of
2536 the two parties were passed from one to the other. The form of proposed new contract of the I. O. E. was given to the company's committee and suggested amendments to the existing contract was given by the company committee to the I. O. E.

Q. I now hand you a paper which I will ask you to identify, if you can, and state what it is.

A. To the best of my knowledge and belief, this is the changes suggested in the articles of agreement as suggested by the committee representing the company.

Q. At the conference?

A. At the conference on April 29th, copies of which were given to all members of the Independent Organization committee.

2537 Mr. MOORE. Mr. Examiner, in view of the identification of this paper which has been given to the witness we now desire to file it as Respondent's Exhibit No. 37. It is entitled, "Changes Suggested in Articles of Agreement between Virginia Electric and Power Company and Independent Organization of Employees of Virginia Electric and Power Company. Vepco draft. 4 29 38"

Mr. HILTON. No objection.

Trial Examiner FORT. There being no objection, it will be admitted as Respondent's Exhibit No. 37.

(The document above referred to was received in evidence and marked "Respondent's Exhibit No. 37.")

Mr. MOORE. We now desire to file as Respondent's Exhibit No. 38 this exhibit, which is a proposed supplemental agreement between the Virginia Electric and Power Company and the Independent Organization of Employees of Virginia Electric and Power Company, if you will so identify it, Mr. Holtzclaw?

The WITNESS. To the best of my knowledge and belief that is the proposed supplemental agreement as submitted by the Independent Organization of Employees.

Mr. HILTON. No objection.

Trial Examiner FORT. There being no objection, it will be admitted as Respondent's Exhibit No. 38.

2538 (The document above referred to was received in evidence and marked "Respondent's Exhibit No. 38.")

By Mr. MOORE:

Q. As we understand your testimony, Mr. Holtzclaw, those two documents were exchanged between representatives of the company and representatives of the I. O. E. at a conference which was held in Richmond on April 29, 1938?

A. That is correct.

Q. And the purpose of those two documents, as we understand it, that the company on its part submitted to the I. O. E. was to show the changes that it desired to make in the existing agreement if there was to be a renewal, and the representatives of the I. O. E. submitted on their part changes that they desired, if there was to be a renewal?

A. That is correct.

Q. Was there anything done at that conference of April 29th, 1938, except to exchange proposals of each side?

A. To all intents and purposes that was all that was done. There was some discussion, but nothing of any consequence. They gave us their proposed new agreement and the company committee furnished them with their suggested amendments, the thought being that each would take them back and study them and report and gather again on the 9th day of May for a further discussion.

That gave each party ten days in which to study what had been submitted by the other party. At the same time, the
2539 date for the notification of a desire to cancel, if wanted, was moved up, I believe, to May 17th.

Q. Do you know whether or not the company in good faith desired to effect the changes in the agreement as proposed in that proposal?

A. It did.

Q. You say that there was a conference set for May 9th to begin the negotiations for the extension of the agreement?

A. That is right.

Q. Was that conference held?

A. That conference was held in Richmond on May 9th. On the morning of May 9th notice of complaint had been filed, or notice that complaint had been filed with the National Labor Relations Board was received in Norfolk, and immediately sent to Richmond by auto and submitted to the company, and, as a result of the receipt of the notice of this complaint and the pending hearing it was decided to take no action at that time in connection with the new contract.

Q. Did you so advise the I. O. E. representatives that that was the opinion of the management of the company; that in view of the s[illegible]ing of this complaint in this present proceeding on that morning that there should be no change in the status of matters, in view of that situation?

A. I advised them that that was the feeling of the com-
2540 pany executives. The I. O. E. committee was not sure how they felt on it at all and wanted to go back and discuss it some more.

Q. As a result of that situation was there a memorandum or supplemental agreement entered into between the company and the I. O. E., dated April 29, 1938, extending the time in which notice to cancel might be given?

A. That is right. That is the supplemental agreement signed by myself as President and all members of the General Committee extending the time to May 26th at which notice of cancellation should be given by either party, if desired.

Q. And if no such notice were given the agreement would automatically renew itself?

A. That is correct.

Mr. MOORE. We would now like to file that as Respondent's Exhibit No. 39, Mr. Examiner?

Mr. HILTON. No objection.

Trial Examiner FORT. That will be admitted as Respondent's Exhibit No. 39.

(The document above referred to was received in evidence and marked "Respondent's Exhibit No. 39.")

By Mr. MOORE:

Q. Mr. Holtzclaw, prior to that date, May 26th, as set out in that supplemental agreement, was there a further conference held by the representatives of the I. O. E. and representatives of the company with regard to an extension of the agreement?

2541 A. A conference was held in Norfolk, I believe, on May 18th.

Q. Was that at the request of the I. O. E. representatives?

A. That is right.

Q. And what was the decision finally arrived at?

A. The whole matter was discussed at great length. No decision was arrived at because it was not decided to renew the contract. Neither party gave notice of cancellation. Up to May 26th neither party had given notice of cancellation, so it is considered that the agreement automatically renewed itself for the second year.

2542 Q. Now, Mr. Holtzclaw, do you recall that just prior to the beginning of negotiations on the agreement of August 5, 1937, and just after Mr. White and your counsel had advised that in their joint opinion the I. O. E. was a properly constituted and organized organization for the purpose of bargaining for the employees that it claimed to represent, that there was an understanding that in order to complete the records there was prepared by representatives of the company and by representatives of the I. O. E. the documentary evidence showing the eligible employees of the company for membership in the I. O. E. and their distribution in departments? Was that so understood?

A. That is correct. The agreement was made before the meeting was opened that satisfactory affidavits would be given as soon as it was possible to do so.

Q. Now, I hand you an exhibit which is in four parts: the first being a letter dated August 19, 1937, from Eugene T. Underwood, chairman, to you (respondent's exhibit 40-A); the second being an affidavit of Eugene T. Underwood (40-B); the third being a letter signed by T. Justin Moore, T. Norman Jones, Jr., and P. R. Williams, addressed to you (40-C); and the

fourth being an affidavit of P. R. Williams, comptroller of the company (40–D), and I ask you to identify those papers as having been received by you on August 19th, in accordance with the understanding at the opening of the conference on
2543 July 30th.

A. To the best of my knowledge and belief, these are exact copies of the correspondence concerning the affidavits as to membership of the I. O. E. as agreed to at the meeting of July 30th.

Mr. MOORE. I file these as respondent's exhibits 40–A, B, C, and D.

(The documents above referred to were marked "Respondent's Exhibits 40–A, B, C, and D", and were received in evidence.)

2544 By Mr. MOORE:

Q. As I understand the purpose of those exhibits, it was simply to confirm and check officially the verifications and advice that had been given by Mr. White and counsel for the company at the beginning of the meeting of July 30th.

A. Correct.

2546 Q. Now, in your statement in Richmond on June the 1st in regard to the point that whatever, if any, adjustments in wages were made would date from June the 1st, was it your purpose that any adjustments would date from June 1st, regardless of whether or not an organization was set up and there was collective bargaining or whether there was simply finally an announcement by the company?

Mr. HILTON. Just a moment. Mr. Moore, I think you confused one date. You said "in your statement of June 1st."

Mr. MOORE. I am sorry. Will you——

Mr. HILTON. May 24th.

Mr. MOORE. May 24th, yes.

By Mr. MOORE:

Q. All right, sir.

A. That is correct. It was my commitment of the company to make whatever wage increase which may be granted effective June 1st, and it had no relationship whatsoever as to
2547 whether or not the employees got that as a result of collective bargaining or just by announcement of the company that wage increases might be granted, if they should be granted, but no relationship between that and collective bargaining.

Q. Was there any firm commitment of any kind?

A. No firm commitment of any character whatsoever. The commitment was that if any wage increase was granted, regard-

less of the conditions under which they were granted, they would be made effective as of June 1st.

2548 Q. Now, you have heard testimony in this proceeding, have you not, in regard to certain employment of a man by the name of Walters, who was in the employment of Railway Audit, and who was thus indirectly performing services for the company on the Norfolk division?

A. I have.

Q. Did you ever know Walters at all?

A. I did not even know his name until this hearing. I did not even know his name was Walters until this hearing. I never saw Mr. Walters. I never met him. Nor did I ever see a report that he sent in to any executive of the Virginia Electric & Power Company in the 8½ years that I have been there.

I have only heard of one report of Mr. Walters in that eight and a half years.

Q. Now, did you know that some such person as Mr. Walters was in the employment of Railway Audit Company, and in turn in the employment of the Virginia Electric & Power Company through that agency on the Norfolk division?

A. I did. I have known that for about five or six years.

Q. What was your understanding as to what were his duties?

2549 A. His duties were to report to the executives of the company on all matters of interest to the company as he found them in the City of Norfolk. He was not employed nor were his duties to report on labor matters, but labor matters were not excluded from his duties; so if any matter affecting labor came in under his observation, I am quite sure that he reported on it, although not one instance of his reporting on labor matters has ever come to my attention.

Q. Well, if he had any duties to make a report in respect of labor activities, it was only because that particular point was not excluded, is that it?

A. Was not excluded, and the particular point may have been of some interest to the company. His job was to report on all matters of interest to the company. He lived in the City of Norfolk, as I understand it, but he was not a direct employee of the Virginia Electric & Power Company. As a citizen of Norfolk, he naturally secured information that an open employee of the company could not secure. He reported whatever he found to be of interest to the company.

Q. So far as you know and believe, after July 1, 1935, did he ever make any report or do any checking whatsoever in regard to any labor matter?

A. Not that I ever heard of.

Q. Mr. Holtzclaw, did you know a young man in the employment of the company who appears here as the chairman of this I. O. E. committee, named Eugene Underwood?

2550 A. I met Mr. Underwood on July 19, 1937, when he came in and presented to me the letter of that date along with a proposed agreement. That was the first time I ever met Mr. Underwood. I unquestionably ran across him in the hall of the building, but until that date I did not know Mr. Underwood by sight.

Q. Well, did you later inquire as the nature of his duties and as to whether or not he had any supervisory duties of any kind?

A. I did, very carefully.

Q. What did you find?

A. Mr. Underwood has no supervisory duties, has not had any supervisory duties. His position, as I recall it, is clerk to the superintendent of system operations, with no supervisory duties whatsoever. If the superintendent of system operations were called out of his office, Mr. Underwood would not have charge.

Q. In other words, he more or less makes up statistics?

A. He is the clerk that makes up statistics, prepares reports.

2556 Cross-examination by Mr. WHITE:

Q. In the conference with Mr. Elliott did you mention to him anything about the organization activities of the employees in the City of Richmond?

A. I did not.

Q. Did you mention anything about organization activities at any other point where the Virginia Electric and Power Company operates?

A. Nothing more than the particular organization that he was supposed to represent.

Q. Mr. Elliott testified—I am referring to page 480 of the record—that you told him—and I am quoting from the record at this point:

"Elliott, why don't you go back to Norfolk and just lay low for a few days and see what this other organization is going to do? That was the I. O. E. he was talking about."

2557 Did you make any such statement to Mr. Elliott?

A. I did not.

Q. Did you make any statement at all with reference to any other organization activities to him?

A. I did not.

Q. Again quoting from the same page of the record, as follows:

"He told me then when he didn't know the first thing about the organization; he had not talked to anyone about it; he didn't

know how far it had progressed, and that he was not going to talk to anybody, but he just had a feeling that they were progressing very, very rapidly and suggested that I should come back to Norfolk and lay low for a few days and see what this other organization was going to do."

Do you recall making any such statement?

A. I did not make any such statement.

Q. On July 30th, when the General Committee of the I. O. E. met with the committee from the Management of the Company, do you recall making a statement as to negotiations opened?

A. I do.

Q. Do you recall in that statement making any reference to two points that the company would definitely not be willing to agree to?

A. Yes; I do.

2558 Q. Do you recall whether the closed shop was one of those things you stated the company would not agree to?

A. The closed shop was one of them that the company would not agree to.

2559 Q. Do you recall what attitude was taken at that time before you left the meeting by the representatives of the I. O. E., Mr. Holtzclaw?

A. I do.

Q. What was that attitude?

A. The representatives were very strong that they would want the closed shop agreement in the contract.

Q. So, as a matter of fact, that discussion of the closed shop started off the "fire works," so to speak, on July 30th?

A. I don't think that started them off. I think my discussion of the tremendous demands of the organization was what started it off; and the closed shop came second.

Q. I believe you said the other thing that the company could not agree to was the amount of wage increase demanded by the I. O. E.?

A. That is correct—the amount of increase that they asked for.

Q. Mr. Holtzclaw, during the negotiations you were in your office, which was on the same floor, were you not?

A. That is correct.

Q. Were you in consultation during the negotiations? Were you in consultation with the members of the committee from the management from time to time during the progress of the negotiations?

2560 A. I was in conference with them.

Q. Will you state whether the amount of the wage in-

crease which was set out in the contract of August 5th was the result of the negotiations between the parties or whether it was the result of a previously determined policy of the company?

A. It was the result of negotiations between the two parties and was not in the slightest degree the result of any predetermined idea of the company officials. The amount of the increase finally granted as a result of that negotiation was very far in excess of anything that any executive of the company ever thought would be granted or would be put into effect.

Q. I believe you testified, Mr. Holtzclaw, that there was no prior understanding with the foremen that there would be a blanket wage increase. Is that correct?

A. None whatever.

Q. Was any suggestion ever made to your knowledge by anyone connected with the company that there was a general wage increase possible provided the employees organized a collective bargaining agency satisfactory to the company?

A. There was never any such announcement made as that; there was never any announcement made that there would be any wage increase granted under any condition.

Q. I believe you stated on examination by the attorney
2561 for the Board—and I am referring to page 93 of the record—that the purpose of your speech on May 24th "was to induce the employees to form an organization; it was to tell the employees if they wished to bargain collectively the company would like to have them proceed on an orderly basis or in an orderly manner."

I will ask you if you intended to say the purpose of your speech was to induce the employees to form an organization.

A. I am quite sure I did not make that statement in my examination by the Government Counsel.

Q. What was your attitude at that time with respect to influencing employees to form some collective bargaining agency?

A. I had no idea of influencing the employees to do anything whatsoever, but to tell them what their status was under the Wagner Act, and if they wanted to bargain collective they could do it, or they could organize any sort of outfit they wanted to organize; there was no restriction as to the character of organization, and if they did not want to organize that was just as well; it was up to them, and the choice was free.

Q. In your discussion with Mr. Elliott on June 15th did you make any statement to him about your preference for a system-wide organization or having any such purpose?

2562 A. I made no such statement to Mr. Elliott. I said that the company could not negotiate with a small unit such

as was represented by the bus and car operators in Norfolk. No statement was made as to what desire the company had.

2568 Cross-examination by Mr. HILTON:

Q. Did you later learn of any organization activities among your employees around that time?

A. There was some later.

Q. How long after your speech in August of 1933 was it?

A. A month or two.

Q. Do you know what organization it was?

A. The Amalgamated Association of Street and Electric Railway Employees of America.

Q. Were there any demands presented to the company requesting recognition by that organization?

A. There never were.

2569 Q. Did you ever meet with any of the representatives or officials of the Amalgamated?

A. Only with the organizer, Mr. Clark.

Q. What is that name, please?

A. Clark.

Q. Clark?

A. Yes.

Q. How many times did you meet with him?

A. Twice, I think.

Q. Did you discuss any proposed agreement at that time?

A. No, sir. Mr. Clark came into my office and stated that he was there for the purpose of organizing the employees in Richmond. I told him to go to it but to stay clear of the company property and not do it on company time.

Q. And not to do it on company property or company time?

A. That is right.

Q. Now, did you ever hear from Mr. Clark in regard to his organization activities at Richmond?

A. Yes.

Q. Or in Norfolk?

A. I did.

Q. When was that?

A. From time to time, in an indirect way. I did not hear personally from him, but perhaps once or twice from telephone conversations, and one call. Mr. Clark was there, as I

2570 recall it, off and on, for several months, attempting to organize the transportation employees in Richmond without any success. It finally resulted in a petition signed by practically all, if not all, of the transportation department employees in Richmond, directed to the president of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees, requesting the president to recall the organizer, in view of the

fact that the employees of the transportation department in Richmond were not interested in being organized.

Q. Now, how did you learn all of that, Mr. Holtzclaw?

A. I saw a copy of the petition which was sent to headquarters office.

2571 Q. When was the last you heard of any organization efforts by Clark or anyone else connected with the Amalgamated?

A. Early in 1934. He remained in and out of Richmond for perhaps three or four months. I don't recall.

Q. So, then, from 1934 up until some time in March 1937,

2572 you received no information concerning any labor organization activities among your employees; did you?

A. None whatever that I recall.

Q. And at that time were the relations between the management and the employees harmonious?

A. Very cordial.

2576 Q. Now, at that time, around March and April 1937, had the newspapers in Richmond and Norfolk been publicizing organization activities in Pennsylvania, Illinois, and so forth?

A. The newspapers all over the country were publicizing labor activities and the Wagner Labor Relations Act. There were strikes in evidence all over the country and unrest, and a discussion of labor's Magna Charta, and the general impres-

2577 sion seemed to be abroad that labor must organize. The papers were certainly full of strike and unrest throughout the country.

Q. It was then, on April 26th, 1937, that you posted this bulletin, which is in evidence, and which you have identified as Board exhibit No. 3?

A. April 26th; that is correct.

Q. And that was within a very short time after the Supreme Court of the United States had declared the National Labor Relations Act constitutional?

A. Yes, sir.

Q. Why did you not post any notice in regard to the rights of employees before the Supreme Court had declared the Act constitutional?

The WITNESS: I don't know.

By Mr. HILTON:

Q. Did you believe the Act should be held unconstitutional?

A. I wouldn't say that. We had had a rather bad experience with the NRA in that respect, but I wouldn't say that had

2578 any effect on the decision reached at that particular time.

Q. In any event, you did not do it; did you?

A. We did not do it.

Q. The purpose in posting Board exhibit No. 3 was to inform the employees of their rights under the Act; is not that correct?

A. Correct—to inform our employees that they could join any union that they saw fit to join, free from influence or domination by the company; that they did not have to join any union, if they did not want to join any union, and if they wanted to talk over any matter with the company, to come in and talk it over.

Q. At that time, had you received any information that some of the employees, at least, did not know their rights under the Act?

A. I had not received any such information as that. I had a definite opinion that a substantial part of our employees had paid no attention to the Act and knew very little about it.

2579 Q. And that bulletin was posted throughout all of your plants?

A. Over the entire property in Virginia and North Carolina. I issued instructions to that effect. I assumed it was posted everywhere.

Q. Then, shortly after the bulletin was posted, did you receive this petition which is in evidence as Board exhibit No. 12? That is the petition from the transportation department in Norfolk.

A. Yes; nearly three weeks later.

Q. About three weeks later?

A. Yes.

Q. And you received that petition from Mr. Throckmorton, did you not?

A. No, sir; that bulletin came up, as I recall, from Mr. Carroll——

Q. Not the bulletin. I mean the petition.

2580 A. The petition came from Mr. Carroll to Mr. Jones, Mr. Jones being the vice-president in charge of transportation, and from Mr. Jones to me.

Q. And I believe you stated you were surprised when that petition came in?

A. I was.

Q. You were surprised because the wages in the transportation division of the company had been adjusted in February of 1937; is not that right?

A. That is right.

Q. And did you believe at that time that this petition came to you by reason of your having posted the bulletin of April 26th?

A. Yes; I thought it had.

Q. And at that time you knew that the company could not stand any increase from 53 cents an hour to 75 cents an hour for the transportation employees.

A. I was very definite on that.

Q. And your reason for that was that the transportation department was not meeting operating and depreciation expenses; is not that right?

A. At the present time, it is barely meeting operating expenses, taxes and depreciation.

Q. And your depreciation runs pretty high, does it not?

A. It does, particularly on bus equipment.

2581 Q. Now, did you discuss this petition, Board's Exhibit No. 12, with the officials of the company when you received it?

A. The petition?

Q. This petition.

A. Yes; I discussed that with Mr. Jones, Mr. Smith, and Mr. Moore.

Q. Did you come to any conclusion as to what you would do with that petition?

A. Not with that petition itself. We considered that, along with other requests that we had for certain changes in working conditions and hours.

Q. The other request that you had was Board's Exhibit No. 11, which was a request from the shop employees to Mr. Cole?

A. In Norfolk.

Q. In Norfolk?

A. That is right.

Q. And you had also had oral requests from the transportation employees in Richmond?

A. As far as I know, there was no written petition ever received as to the two requests by the transportation department in Richmond, nor as to the request from the electric department employees—nothing in writing. Those were verbal.

Q. How did you receive notice of these oral requests, Mr. Holtzclaw?

2582 A. I don't recall exactly, but it came to me through the department head.

Q. And did they, either before or after the petition from the transportation department of Norfolk, that is, the petition, Board's Exhibit No. 12?

A. I am sorry I cannot answer that definitely, either. They were about the same time.

Q. Well, you had discussed all of these petitions: that is, the two written petitions and the two oral petitions, that you had received.

A. Correct, and one of the things most surprising to us was the fact that these requests had come in from so many different departments and locations of the property.

Q. Now, did you decide, that is, you and Mr. Smith and Mr. Moore, that you could not deal with any individual groups or units?

A. I don't know whether we decided that in the conference or whether I decided it myself, but the decision was arrived at that to attempt to deal with all of these petitions individually would just be an impossibility.

Q. So it was then that you decided to call a meeting of the operating heads on May 20, 1937?

A. Shortly after the receipt of these two petitions from Norfolk and the three oral requests from Richmond we came to the conclusion that something had to be done about it, and in
2583 conference we decided to call together in Richmond all of the department heads of the company on May 20th, to put the situation up to them and to discuss it with them. That brought about the meeting in Richmond on May 20th at the John Marshall Hotel.

Q. Those petitions were received around the 15th of May, were they not?

A. The Norfolk transportation petition came to my desk just about the 15th of May, and the others were in that immediate neighborhood, as to time.

Q. And at that time you knew that the petitions, Board's Exhibits 11 and 12, that is, Elliott's petition and the petition to Mr. Cole, were at least in the nature of labor organizations; is not that correct?

Mr. GIBSON. I object to that, Mr. Examiner. It calls for a conclusion of law.

Mr. HILTON. We have gone into quite a bit of law and opinions with this witness.

Trial Examiner FORT. Read the question, Mr. Reporter.

(The Reporter thereupon read the pending question as above recorded.)

Trial Examiner FORT. In view of the questions asked on direct examination, I think it is clearly admissible.

The WITNESS. I would say that they were in the nature of a desire to bargain collectively, and not necessarily as
2584 a labor organization.

By Mr. HILTON:

Q. And what, in your opinion, is a labor organization, Mr. Holtzclaw?

A. I really don't know.

Q. Well, would you say it is a group of men, who——

A. It is a group of men.

Q. (Continuing.) A group of men who get together for the purpose of bettering their working conditions, their rates of pay, and so forth?

A. And for other mutual aids and benefits, such as insurance, sick benefits, death benefits, and things of that sort. I do not think that this petition from Norfolk carried any such thing as it. It certainly was an indication of a desire to bargain collectively, but not necessarily as what is commonly known as a labor organization or labor union.

2585 Q. You do not know anything about labor organization, do you, Mr. Holtzclaw?

A. I do not.

Q. So that if the petitions had included, say, sick benefits, and so forth, for the members, you would then have considered them as a labor organization, as coming from a labor organization, would you not?

A. No; I think if they told me they were a labor organization with a constitution and bylaws I would then assume they were a labor organization.

Q. But as you accepted them you merely considered them as a group asking for collective-bargaining rights, is that right?

A. A group working for one department of our company acting together to secure increase in wages and working conditions.

Q. Now, how long did you consider this petition, Board exhibit 12?

A. That is the Norfolk petition again? I cannot remember that number.

Q. The Norfolk petition; yes.

A. I received that petition about May 15th, and I called a meeting of department heads to discuss it on May the 20th, and on May the 24th I called a meeting of the employees, nine days after

2586 the receipt of that petition in my office. I had the employees together in Richmond to listen to what I had to say, and in Norfolk to listen to what Mr. Throckmorton had to say.

2588 Q. Now, when you received this petition from the Norfolk transportation division did you discuss that petition with Mr. Moore with respect to whether or not it was a proper unit for collective bargaining?

A. I do not recall whether I did or not. I do not recall that we had any discussion about that time as to what might be considered a unit for collective bargaining.

Q. Or that the 190 men who signed that petition represented a majority of the transportation workers?

A. I was aware of the fact that they represented a majority of the streetcar and bus operators in Norfolk.

Q. And did you ask Mr. Moore or get any advice from Mr. Moore as to whether or not that was a proper way to submit
2589 any terms or conditions on behalf of the employees?

A. I do not recall that we gave any consideration as to whether or not that represented a unit or whether or not it could be constituted as a unit.

Q. Now, then, you had decided on May the 20th to hold a meeting on the 24th in Richmond and one on the 25th in Norfolk, is that right?

A. That is correct.

Q. And you were to address both of those meetings?

A. That is right.

Q. Now, you did address the meeting in Richmond on the 24th, did you not?

A. Yes, sir.

Q. And on the morning of the same day it was decided to hold the meeting in Norfolk on the 24th also?

A. Yes, sir.

Q. And the purpose for that was so that there would be no confusion among the men as to what was said at the meetings?

A. The purpose of that was so that all employees of the company, or, rather, the representatives of the employees, would get the same message at the same time.

Q. And at the meeting in Norfolk you just read the speech, did you not?

A. In Richmond, you mean.

2590 Q. In Richmond.

A. In Richmond, yes. I made a few remarks before and a few remarks afterwards, to which I testified on direct examination by Mr. VanArkel.

Q. I do not want to go into that in too much detail. Now, just before you were to give this speech, I believe you stated that you decided to tell them that if any pay increases should be given they would be retroactive as of June 1, 1937.

A. They would be effective as of June 1st.

Q. Effective as of June 1, 1937?

A. Effective as of June 1st.

Q. And can you tell us what caused you to make such a statement at that meeting, Mr. Holtzclaw?

A. No, sir; I cannot. We had been considering the matter, and I just came to the conclusion when I walked up on the stand that I was going to say that if any wage increases were granted as a result of the formation of a union or not as a result of the formation of a union, if the company announced any wage increase—in other words, if the men did not see fit to

organize, that it would be effective as of June 1st. Not necessarily retroactive, because June the 1st was still a week away, and the company may have announced a wage increase during the coming week, or the men may have organized during the coming week. So that it was not necessarily retroactive;
2591 it would be effective as of June 1st.

Q. And the reason that you stated June the 1st as the date, the effective date, of any such increase, was because you knew it would take some time for the men to form such an organization, did you not?

A. I knew it would take some time, and I felt that there should be ample time for them to arrive at the conclusion as to what they wanted to do, if anything, in a cool and calm deliberation, and not to be rushed into it in order to get some possible increase in pay.

2593 Q. Now, after you had completed your speech and remarks on the 24th did you tell the men, that is, the representatives, that they may remain and use the auditorium to deliberate on what you had told them?

A. I told them that in Richmond, yes.

Q. In Richmond?

A. Yes.

Q. And you know that some of the men did remain?

A. I left immediately; I do not know.

2596 Q. Were any questions asked by any of the supervisors in regard to the instructions that were issued?

A. Yes, sir.

Q. Can you tell us just generally the nature of the questions that were asked by the supervisors?

A. The principal question, and the one which anybody would expect logically to be asked by the supervisors and foremen—they lived with these men day by day upward of 10 to 25 to 30 years, and they naturally expected to be questioned on these points, because they were points of vital interest to them, and it was rather difficult for them to understand why they could not talk to an old friend about something that vitally concerned them.

The question that we got was if a man comes up and asks, "What shall I do?" what shall I tell him?

We, naturally, had to tell him that he must tell nothing, despite the fact that he must be a friend of long standing, personal as well as business friend, and would tell him nothing; that whatever decision be arrived at must be by making up his own mind and not what he was told.

Q. Now, you did not have any of the foremen at that meeting in Richmond on May the 25th, did you?

A. Not foremen, no; department heads and subheads, assistant superintendents and superintendents.

2597

Q. And were any instructions issued as to information that the department heads would give to the foremen?

A. We requested the department heads to carry those same instructions back to their foremen and supervisors.

Q. You did not issue those instructions in writing, did you?

A. No, sir.

Q. Did you ever receive any complaints that any of your foremen or supervisors were violating those instructions?

A. The first complaint I heard was at the time of Mr. Schauffler's investigation in July of last year.

Q. Were you surprised to learn that?

A. Yes, sir. I doubted it.

Q. Now, after this speech in the meeting of the 24th and the 25th of May, did you then do anything with respect to this petition from Norfolk, Board Exhibit 12?

A. No, sir.

Q. Did you at any time notify Elliott or any of the names mentioned in the petition as to what you were going to do in regard to that petition?

A. I did not; no, sir.

Q. Well, did you authorize anyone to make such a reply for the company?

A. I do not recall that I did.

2598 Q. Did you consider the agreement, which was signed between the I. O. E. and the V. E. P. on August the 5th, 1937, as covering the matters set forth in the petition, Board Exhibit 12?

A. I considered that my speech of May the 24th had covered it, in which I had said that it was impossible for the company to consider dealing with small groups or with individuals. I considered that that was an answer to the petition from Norfolk.

2599 Q. Now, just to go back a moment to the meeting of May the 24th in Richmond: Was Mr. Williams present at that meeting?

A. P. R. Williams. Both of them were present at the meeting as I recall it.

Q. P. R.?

2600 A. P. R. Williams, yes; he was present, as I recall it.

Q. And what is his connection with the company?

A. He is comptroller of the company.

Q. Do you consult him on matters, say, of labor relations?

A. No, sir; very seldom. Only if something happened to affect his particular department.

Q. And would he have a right himself to pass on any matters pertaining to labor organizations?

A. Not to fundamental company policy.

Q. He would have to consult you ordinarily?

A. As to fundamental policy; yes. Mr. Williams reports direct to me.

Q. Is his office on the same floor with your office, Mr. Holtzclaw?

A. Yes, sir; it is.

2602 By Mr. HILTON:

Q. Mr. Holtzclaw, I will show you what has been marked for identification as Board's Exhibit No. 38 and I will ask you if you can identify that photostat?

A. I cannot.

Q. That is addressed to Mr. P. R. Williams?

A. Yes.

Q. Is that the same Mr. Williams you were talking about?

A. That is right. He is Comptroller of the company.

Q. Were you ever consulted with respect to the matters contained in that letter of June 14, 1937?

A. I do not recall it. I may have been. Apparently this is a request for information as to the names on the pay roll of the company. That is a request that would have been given to anybody who requested it.

Q. You mean you would have been willing to give this
2603 information to anyone requesting it?

A. I mean any organization which said they were trying to organize. It would have been given to the American Federation of Labor, the C. I. O., or anybody else who asked for it.

Q. And you would have been consulted before that information was given out, wouldn't you?

A. I would think so. But I don't recall that I was consulted.

Q. Had you ever received any requests similar to that request contained in Board's Exhibit No. 39 for identification before?

A. I don't think so.

Mr. HILTON. Mr. Examiner, I would now like to offer in evidence as Board's Exhibit No. 38 the document which was previously marked for identification as Board's Exhibit No. 39.

Trial Examiner FORT. Do you expect to offer any more proof as to its validity or its actual existence?

Mr. HILTON. We cannot very well do that until the Intervener puts on its case.

Trial Examiner Fort. It will be accepted at this time, in the absence of objection.

(The document previously marked for identification was received in evidence and marked "Board's Exhibit No. 39.")

By Mr. Hilton:

Q. Mr. Holtzclaw, I show you what has been marked for identification as Board's Exhibit No. 40-A and I will ask you if you can identify that document.

2604 A. No, sir; I cannot.

Q. Can you identify the signature?

A. Yes; I identify Mr. Williams' signature and the company's letterhead. I may have seen it.

Q. That is in reply to Board's Exhibit No. 39, which has just been offered in evidence? Isn't that right?

A. That is right.

Q. I show you what has been marked for identification as Board's Exhibit No. 40-B, Mr. Holtzclaw, and I will ask you if you can identify that document?

A. I cannot; no, sir.

Q. Were you ever consulted in connection with a letter, Board's Exhibit 40-A or in the preparation of that letter?

A. I don't recall that I was. The first I knew about the Independent Organization we are talking about, or that you are talking about is, as I just testified, from the newspaper. The first clipping I saw in the paper was dated, I think, June 10th as to the activities of Mr. Holtzbach and, I think, Mr. Bertolett, who gave out a story to the Richmond papers on June 10th—I think that was the date—concerning the Independent Organization of Employees of the Virginia Electric and Power Company. But it never came to my personal attention except through the newspapers. That came to my attention in the newspapers about June 10th. If this request for information came to my attention on June 14th I don't recall it.

2605 Q. Examining Board's Exhibit No. 40-B for identification; will you say that the information contained on there is correct?

A. That looks to be just about correct. That shows 3,009 employees not in a supervisory capacity. At that time there were about 3,400 employees. And I would think that is practically correct.

Q. Such information would be under the custody and control of Mr. Williams in Mr. Williams' capacity with the company, wouldn't it?

A. That is right.

Mr. HILTON. I would like to offer in evidence the document previously marked for identification as Board's Exhibit 40-A and 40-B.

Trial Examiner FORT. In the absence of objection, they will be received.

(The documents previously marked for identification were received in evidence and marked "Board's Exhibit Nos. 40-A and 40-B.")

2610 Q. And, of course, you relied upon the opinion of Mr. Moore and proceeded to negotiate on July 30th, 1937, did you not?

A. To a large extent that is true. I relied upon Mr. Moore.

Q. At that time it was your understanding from Mr. Moore that proper documentary evidence would be submitted later? Is that correct?

A. That evidence had been submitted already to satisfy him, and that documentary evidence for the record would be supplied just as soon as it was possible to do so.

Q. Did Mr. Moore tell you before that time, July 30, 1937, he had any documentary evidence which would show that the I. O. E. represented a majority of the employees in that unit?

A. Mr. Moore had before him at the time he made that assertion to me documentary evidence to indicate that the I. O. E. represented a substantial majority of the employees of the company.

Q. What was the nature of that documentary evidence?

A. The nature of that documentary evidence was a list of departmental employees and the cards that had been signed by employees, in boxes. He did not count them, I think, but he was satisfied it represented a substantial majority of the employees.

Q. Would you say that the transportation department employees in Norfolk, that all of the cards signed by the I. O. E. Norfolk Employees were submitted to counsel for the company?

A. I did not say that.

2611 Q. You just stated that he did have. How do you know that he had?

A. He advised me that he had in front of him sufficient evidence, based upon which he could assure me that the I. O. E. represented a very substantial majority of every department of the company's organization.

Q. Did Mr. Moore tell you that he had signed applications or membership cards in the I. O. E. before him?

A. No. He just gave me his assurance that he did have, that the I. O. E. represented a majority.

Q. And you relied upon whatever evidence Mr. Moore based his opinion upon, did you not?

A. That is correct.

Q. Did you take a great part in the negotiations which commenced July 30, 1937?

A. I took practically no part in them.

Q. And I believe at the time the negotiations started there were two principal points involved; one was the closed shop and the second was in regard to wages?

A. That is what I took part in. My opening talk to the two committees was on those two points.

Q. When you opened your talk in regard to the closed shop did you make it definite to the committee, or to the committee for the I. O. E., that the company would not agree to any closed-shop agreement?

2612 A. To what?

Q. Any closed-shop provision in the agreement.

A. Yes, sir; and that we would not agree to a million-dollar increase in wages.

Q. I did not get that answer.

A. And that we would not agree to a million-dollar increase in wages.

Q. Is that what the increase would amount to that the I. O. E. was asking for?

A. Something like that. It was something over a million dollars.

Q. These negotiations lasted approximately two full days and two full nights? Isn't that correct?

A. I think they lasted until midnight, that is, all day long and until midnight on two days, and the third day was consumed in transcribing the agreement.

Q. And before any closed-shop agreement was agreed upon, were you consulted?

A. Yes, sir.

Q. Why did you change your opinion on the closed-shop provision?

A. The I. O. E. held out very strongly for a closed shop. There had been many concessions on both sides, I take it, particularly concessions as to wages and some working conditions.

We had a precedent in the company already which they
2613 called very strongly to our attention, and which is not particularly liked by the employees of the company, which is a closed shop as regards our company Benefit association and group insurance. A closed shop is definitely approved by the Wagner Labor Law. The I. O. E. convinced us that if they are to be the bargaining agency and if all em-

ployees of the company were to benefit by what negotiating the I. O. E. did, all employees of the company should pay their part of the operation of the I. O. E.

Points of that sort were just insisted upon and fought out, and they were fought out so hard by the I. O. E. that at midnight of the second night we said "all right, we will agree to it and try it out for a while, with the understanding that nothing in that provision will in any way prevent a man from belonging to any other labor organization he saw fit to belong to or any other organization he saw fit to belong to. We tried it out for a year, and when negotiations came up again this year the first demand of the company, or the first demand the company made, or at least one of the first demands the company made, was the abolition of the closed shop.

2614 Q. Now, at any time during the negotiations with respect to the closed shop and wages, did the I. O. E. threaten to strike the plant if their terms were not met?

A. They did not; no, sir.

Q. Did you know whether or not, under the constitution and bylaws of that organization, there was no provision for a strike?

A. I didn't know.

2620 Q. You did not know Mr. Underwood before the 19th of July 1937, did you?

A. No, sir; I did not know him.

Q. I believe you stated that he is the clerk to the superintendent of system operations?

A. That is my understanding.

Q. And he makes up statistical reports, does he not?

A. I think he makes up power station reports, daily output of various power plants, and keeps the records for the superintendent of system operations.

Q. And is that in the nature of confidential work?

A. Not in the slightest; no, sir.

Q. Not in the slightest?

A. No, sir; It is a daily report for power station activities and transmission activities, nothing confidential about it.

2621 Q. With regard to the lay-offs in the spring of 1938, I believe you stated that was because your 1938 construction operations had been greatly curtailed; is not that right, Mr. Holtzclaw?

A. The large 1937 construction program had come to an end, and there was no 1938 construction program of any magnitude.

Q. And it was then decided that the crews had to be reduced?

A. That is right; decided in March that they had to be reduced.

Q. In March 1927?

A. In March 1938.

Q. 1938. I am sorry. And 13 men were let out on the Norfolk division?

A. I think that is the right figure, about 13.

Q. Do you recall how many were let out in the Richmond division?

A. There were about 50 or 60, all told, at that time, scattered around over the property—Suffolk, Richmond,
2622 Carolina, Petersburg, Fredericksburg. I do not recall how many in any particular spot, except the 13 in Norfolk.

2623 Q. Now, in regard to Walters, the operative of the R. A. & L., you knew that he had been employed by the com-
2624 pany through the R. A. & L. for a period of five or six years, did you not?

A. Yes; I knew at some time.

Q. He was to report on all matters of interest to the company, and that would include labor matters, too, would it not?

A. That is right.

Q. You have never received any written reports from Walters, have you?

A. I have never received a written report nor a verbal report from Mr. Walters.

Q. You have heard the testimony that Walters reported directly to Mr. Bishop?

A. That is my understanding; yes, sir.

Q. You never changed that procedure after you became president of the company, did you?

A. No, sir. I inherited Mr. Walters. He was here when I came. I did not make any changes in his duties, nor in the way he reported. As a matter of fact, I think I had been here at least three years before I knew he was around. I think I first learned it in 1932.

Q. I believe you stated that after July 1935, you never had any reports on labor matters at all, did you?

A. I did not; no, sir.

2635 Re-cross-examination by Mr. Hilton:

Q. Mr. Holtzclaw, when you were examined by Mr. White, your attention was directed to page 93 of the pamphlet here, wherein you stated, with respect to the purpose in making the speech on May the 24th, 1937, and your answer was: "It was to induce the employees to form an organization; it was to tell the employees if they wished to bargain collectively the company would like to have them proceed on an orderly basis or in an orderly manner."

Now, as I recall, you denied making that statement, in response to Mr. White's question. Do you remember that?

A. I do not think I denied it; I asked if I made it.

2636 Q. I will be glad to show it to you. Would you mind reading those articles again? The question is right there.

A. I will read the question again:

"And your purpose in making the speech was to induce the employees to form an organization, was it not?"

Unfortunately, I fell into the questioner's language in using the word "induce," which, unfortunately, is what a witness does. He used the word "induce" in his question, and I used it in my answer, although if you will read the rest of it you will be satisfied that I did not mean "induce," because "induce" carries with it persuasion or force; and in my speech of May 24th I never intended any persuasion or any force.

As you will find in the further reading of my testimony on May 19th, what I said was it was an invitation or suggestion. And "induce" is simply the selection of the wrong word in which I followed the questioner.

Q. It was my recollection when you answered approximately the same question for Mr. White you denied making such an answer for the record.

A. I meant to say to Mr. White, "Did I really say 'induce'?" Evidently I said it, because I asked my associates if I said it, and they said I did. It was just an unfortunate choice of words.

By Mr. Moore:

Q. And you found that the transcript showed it?

2637 A. Yes; found the transcript showed it. And my associates said I did say "induce." I am glad of this opportunity to correct it.

2639 By Trial Examiner Fort:

Q. But you were definitely determined not to deal with a separate unit such as the 190 men, that is, the Norfolk agency of the company or the Norfolk Transportation Division?

A. That is correct. As I stated this morning, we were definite in our views that had we dealt with this petition as it came up from Norfolk directly it would immediately have met a corresponding petition from the eight other divisions of the Transportation Department.

Q. Of course, if your men had elected to join no association, and each individual had insisted upon dealing with you, that would have presented a much more difficult situation?

A. That would have meant the utmost in chaos.

Q. You would never permit that?

A. No.

Q. Then how do you square that with your statement on April 24th that each individual could do as he pleased?

A. We didn't say we would bargain with each individual.

Q. And then you did not intend each individual could bargain as he saw fit?

A. This company, until a year ago, has always worked on a strictly individual relation-ship. There has never been an or-
ganization of any character that has dealt with or nego-
2640 tiated with the company.

Q. I understand that.

A. And this bulletin of April 26th simply said that you have a right to organize or join or assist in any labor organization of your own choosing or belong to any labor organization of your own choosing; it is not necessary for you to join any organization; if you have anything to talk about, come up and talk about it.

Q. In your speech of May 24th, as I understand it, you told them that they could do as they pleased; they could join no organization or could select whom they pleased to deal for them. Just prior to that speech, and after your April 26th bulletin, was this request from 190 men who sent a representative to you to ask you to deal with them, but you declined to deal with them. That is a fact, isn't it?

A. No exactly. The representative of 190 men did not come to see me until several weeks after May 24th. They sent in a petition to the superintendent at Norfolk. It was just a petition. Now, let me assure you that we have many time in the past received petitions from our employees, written petitions where a group would get together and say, "We would like to have this changed," or "We would like to have that changed." Many times we have received those in my experience. I was called upon by the representatives of this group in Norfolk June 15th,
which was approximately three weeks after I made the
2641 speech on May 24th.

Q. I understood you told him that "Despite your statement on May 24th that they could deal as they pleased, you would not deal with that unit as such"?

A. That is correct.

Q. Isn't it true the only unit you would have dealt with was a system-wide organization

A. No, sir; it is not.

Q. What other would you deal with?

A. A unit consisting of transportation department employees would have been a logical unit; the unit consisting of power station and electric department crews would have been a logical unit; a unit consisting of clerks and people in the office would have been

a logical unit. A unit consisting of the transportation department operators in Norfolk or Richmond or Petersburg, and so on, to my mind would not have been a logical unit to deal with. And I still feel the same way about it.

Q. That is, to your mind. But suppose the employees thought a different idea?

A. Under the law the employees have a right to their ideas. They may be contrary to mine.

Q. If they insisted upon it, how would you meet the situation?

A. I don't understand that.

Q. If they insisted upon dealing through such a group
2642 as they chose, how would you meet that situation?

A. If they insisted upon the Norfolk Unit we would insist upon not dealing, and then it would be up to the courts or somebody to say whether the Norfolk Transportation Department would be a logical unit with which to deal.

Q. Then wouldn't you deal with them in a unit at Norfolk?

A. Not until we were told to deal with them.

Q. By the Court?

A. Yes, sir.

Q. As a matter of fact, prior to this May 24th meeting was it the sense of those present that it was not necessary to have a union at all?

A. I don't know.

Q. Was it your opinion a union would not help or be of any benefit to the man?

A. No.

Q. Isn't that what you told them in this speech?

A. I don't think so.

Q. I don't mean the speech of May 24th, but I mean the other speech?

A. The reason I just made the remark to you was that our policy today is much stronger in that respect than it was back in 1933. In 1933 was the first time anything ever went on the statute books
in this country that I know of affecting business as a whole
2643 which gave employees of all business as a whole the right to organize and restricting the employer. And the N. R. A. was a very mild thing as compared with the Wagner Labor Relations Act.

Q. What I wanted to find out was this, whether or not this policy still holds?

A. I said to a large extent.

Q. To what extent does it?

A. Our policy today is a far more "hands off" policy as to labor than it was in 1933.

Q. Let me read you this paragraph. It is the second paragraph on page 5 of Exhibit No. 36:

"After a company signs a code, it becomes a legal offense under the code for the employer to interfere, restrain, or to coerce employees in matters pertaining to their organization, but it would be very foolish and entirely inconsistent with the past policy of our Company's operation if I did not state definitely to our employees that it is our belief that the organization of our employees for any purpose in this Company for their protection or collective bargaining or what not is entirely unnecessary."

That is pretty stringent when it becomes a legal offense under the code?

A. After signing the code.

Q. Before signing the code or afterwards?

A. After signing the code.

2644 Q. This was after?

A. Let me correct that.

Q. Was this before or after signing the code?

A. I am not positive. It was just about the time of signing the transit code. This statement says after signing the code.

Q. "After a company signs a code, it becomes a legal offense under the code for the employer to interfere, restrain, or to coerce employees in matters pertaining to their organization, but it would be very foolish and entirely inconsistent with the past policy of our Company's operation, if I did not state definitely to our employees that it is our belief that the organization of our employees for any purpose in this Company for their protection or collective bargaining or whatnot is entirely unnecessary."

Now, have you changed from that policy?

A. Yes. We would not make that statement today because at the time this statement was made, or at the time this speech was made—this paper was read—we did not consider that that statement fell into the category of interfering with, restraining, or coercing; it was simply a bare statement that judged by experience in the past you do not need to organize to get along with this company.

We would not make that statement today under the Wagner Act.

Q. The next sentence reads "The Company's policy in

2645 the past has been one of fairness and that policy is not going to change under the N. R. A. or any other Act that may be passed."

A. That was a very careful, deliberate statement.

Q. Would that refer to the Wagner Act?

A. Not with regard to changing the fairness or as to changing the company's policy of fairness.

Q. Your statement of fairness has reference to the immediately preceding sentence, with reference to dealing with your men and lack of necessity for any union, doesn't it?

A. Yes. That was the company's policy in the past and was one of fairness. It did not say anything about coercion or restraint or want of fairness. That policy is not going to change under N. R. A. or any other Act.

Q. In the same paragraph it is coupled with another sentence, and in the next following sentence you feel it is unnecessary for the men to have any union representation?

A. We would not make that statement today.

Q. You think the union is necessary for your employees?

A. No; I don't think it necessary, but I wouldn't say that it is unnecessary.

Q. Do you think a general union is necessary or a system-wide union is necessary?

A. No, sir; I do not.

Q. But you do feel that it must be at least system wide in the particular unit?

2646 A. I feel in order to let the official of the company do something besides negotiate with labor that it should be brought down to the smallest number of logically operated units possible, so that my time and that of Mr. Smith and Mr. Throckmorton would not all be taken up with negotiating with 3,500 employees.

Q. Your preference is for a system-wide union? Your prefrence is for a single unit?

A. Single unit or something between that and the individual. I would say a few units which would represent the logical subdivisions of this company's operations. There is no relation between the power house and the streetcar operators, and there is no relationship between the office and the gas plant.

2650 Q. Did it take a month after Mr. Parker appeared, for you to find it necessary to notify them?

A. It took Mr. Parker approximately a month to appear, himself, after he telephoned.

Q. You knew on March 15th that he was there?

A. Yes; he called on March 15th and asked for an appointment.

Q. And that his purpose was to organize?

A. Yes, sir.

Q. Would not that have been an appropriate time to advise the employees?

A. I think that is probably right.

Q. Is it not true that the Supreme Court intervention between those two dates had a great deal of bearing on that?

A. Unquestionably it had a bearing.

Q. Was not that the overwhelming reason?

A. No, sir; the real bearing on it was that the employees wanted to know the attitude of the company. The Supreme Court decision definitely made the Wagner Act the law of the land.

Q. I must disagree with you there. It was definitely the law of the land two years before.

A. That is right. The Supreme Court declared it constitutional.

Q. There was no question about the validation of the
2651 act. It was validated in 1935.

A. I can say this, I think, with perfect freedom, that if Mr. Parker had not called at the Reeves Avenue powerhouse, indicating a desire to organize the men in the Reeves Avenue powerhouse, and if nobody else had started an attempt to organize any other of our departments, the bulletin of April 26th would not have been published until something happened, in May, June, or July.

2663 Redirect examination by Mr. MOORE:

Q. So far as you know and believe, was that request that was sent in to the general offices of the Amalgamated Union in Detroit, a copy of which was sent in to the company offices, entirely voluntary on the part of the employees of the Richmond division?

A. I am positive that it was.

Q. It was not in any way inspired or encouraged by anybody with the company, with your knowledge or sanction?

A. The information given to me at the time would indicate that it was entirely voluntary.

Q. And as I understand it, Mr. Clark, who was the organizer, before he left Richmond, dropped into the office to see you in a friendly way, did he not?

A. Mr. Clark dropped by to see me just as he was leaving Richmond, and said that the employees of the Virginia Electric & Power Company did not want any union, and he was leaving town, after spending four months.

2667 By Trial Examiner FORT:

Q. In this May 24th meeting that was held at Richmond, and the duplicate meeting at Norfolk, how did you similarly advise your North Carolina division? I understand that is a separate division.

A. The North Carolina division, Mr. Examiner, as I recall it, was represented at both the Richmond meeting and the Norfolk meeting. Part of North Carolina is in the Norfolk division, and part of it is in the Richmond division, and the men from those two divisions came up, part to the Richmond meeting, and part to the Norfolk meeting.

Q. That had not been covered and I did not understand how that was handled.

A. Elizabeth City and Hertford and Edenton section is in the Suffolk area, which is in Norfolk, and the Roanoke Rapids area is in the Richmond division.

2669 AMBROSE KENNETH FOWLER, a witness previously called by the Board, and being duly sworn, resumed the stand on behalf of the Respondent, and testified further as follows:

Direct examination by Mr. MOORE:

Q. Mr. Fowler, I believe you are the same Mr. Fowler who has already testified in this case as a witness called by the Board.

A. I think so.

Q. Now, I believe you testified in this proceeding before Mr. Judge or Mr. Harrell testified, did you not?

A. Yes, sir.

Q. Were you in the court room while both of those witnesses testified and did you hear their testimony?

A. Yes, sir; I think I heard most of their testimony.

2670 Q. Now, do you recall whether or not you as one of the foremen in the distribution department brought your gang into Cove Street last spring, in April, May, or June, on more than one occasion ahead of the regular quitting time which is 4:30?

A. No, sir; I did not. I only recall bringing them in one occasion before the regular quitting time at 4:30.

Q. Now, was that one occasion on the 24th day of May, as near as you recollect, that is, the day that this meeting was going to be held at the company's building to be addressed by either Mr. Holtzclaw or Mr. Throckmorton?

A. The only occasion that I remember bringing men in ahead of time was the occasion of the first meeting over the Cove Street garage. Whom the men were to be addressed by I didn't know anything about that. I know they were to attend a meeting, and that is the first meeting I know they were to attend over the Cove Street garage.

Q. Now, you know that there was a second meeting over there? You knew about that, did you not?

A. Yes, sir.

Q. And at this second meeting, as it has been indicated
2671 by the evidence, there was some voting or expression of some kind as to preferences among the men as to whether they preferred to have an independent union or C. I. O. union or A. F. of L.

Now, you recall that testimony, do you?

A. According to the testimony; yes, sir.

Q. Now, the time that you brought in your crew was the first meeting ahead of this meeting where they did the voting, as I understand it?

A. Yes, sir.

Q. Now, is 4:30 the regular quitting time?

A. Yes, sir.

Q. Now, on this one time that you did bring in the men ahead of time, what was the time you brought them in?

A. 4 o'clock.

Q. So on that one occasion there was 30 minutes of company time that was used——

A. So far as I know.

Q. To attend that meeting?

A. So far as I know; yes, sir.

Q. Was that the only time where any company time was used, so far as you know and believe, for the purpose of holding any meetings of any men in your department?

A. So far as I know; yes, sir.

Q. How long have you been employed by the company,
2672 Mr. Fowler?

A. I was employed by the Virginia Electric & Power Company in the spring of 1927.

Q. Were you employed first as a foreman?

A. I was employed as a first-class lineman.

Q. Well, now, when you were employed did you notify the foreman who employed you that you had some union connections?

A. If I remember correctly, I had four or five letters of recommendation and a union card in one envelope. I offered him the envelope, and told him what was in it. His answer was, "If you are not a first-class lineman, I will find it out. It is not necessary for me to read all that paper."

Q. Who was that foreman?

A. Theodore F. May.

Q. He is still the general foreman?

A. He is still the general foreman of the Virginia Electric & Power Company.

Q. He did not seem to be very much interested in the union part.

A. He did not seem to care whether I was or was not a member. The only thing he was looking for was a first-class lineman.

Q. Now, you already testified that you are a member of the I. B. E. W.

A. Yes, sir.

2673 Q. Have you been a member ever since you came to the company?

A. Not constantly, because there have been lapses for financial reasons.

Q. But for the greater part of the time you have been?

A. Yes, sir.

Q. Now, did you hear the testimony of Mr. Davis, who has testified in this case, who testified that foreman Tweedy had stated that the fact that you were a member of the I. B. E. W. had actually hurt you? Did you hear that statement?

A. I heard the statement; yes, sir.

Q. Well, so far as you know and believe, is there any truth whatever in that statement?

A. Not to my knowledge. I do not know as it has ever hurt me.

Q. Do you believe it?

A. I do not know anything about it, if it has. I do not know if it has ever done me any good, and I do not know if it has ever done me any harm—not with the Virginia Electric & Power Company.

2674 Q. Is there any other one of the foremen who is also a member of the I. B. E. W.?

A. According to his statement, we have a man who has been a member of the I. B. E. W. constantly. He is a foreman of the Virginia Electric & Power Company. He has been a member for the past 18 years.

Q. Among the line crew?

A. Among the line crew; yes, sir.

By Mr. SPENCER:

Q. According to whose statement?

A. This foreman's statement.

Q. Well, who was that?

A. H. M. Finley.

By Mr. MOORE:

Q. There has never been any attempt, so far as you know, on the part of you or Mr. Finley to keep secret your union affiliations, has there?

A. I do not know anything about it.

2689 Trial Examiner FORT. And what the instructions were.

By Mr. MOORE:

Q. What were the instructions that you had on the subject as to whether or not a foreman should not attempt to influence the men?

A. I don't remember of any definite instructions I received with regard to not having anything to do with it other than that we couldn't belong to the organization or attend any of the meetings, which consequently let me to understand I shouldn't have anything to do with it.

Q. You were given clearly to understand that you were not to take any part in it?

Trial Examiner FORT. He did not say that. He said he understood he was not to attend.

By Mr. MOORE:

Q. Mr. Fowler, were you given any instructions on the subject that you were not to take part or try to influence the men one way or the other.

Mr. HILTON. That is objected to.

Mr. MOORE. I asked him specifically so.

2690 Trial Examiner FORT. He may ask that.

The WITNESS. I wasn't definitely instructed by anybody not to do anything, or not to have anything to do with it, and I was never definitely instructed to have anything to do with it—either one.

Q. Did you have any understanding as to what was the desire of the company on that point? That is what I want to know.

A. I could take that from the fact that they told me I was not allowed to attend any of those meetings, that I wasn't to have anything to do with it.

Q. Do you intend to say that you had no instructions from Mr. Holik or Mr. May or Mr. Crafton on the point that the foremen were instructed not to interfere with or try to influence the men, or that you just don't recall any instructions?

A. I don't recall any instructions to that effect, that is, definite instructions.

2705 Cross-examination by Mr. SPENCER:

Q. And during the time that Mr. Harrell worked——

A. It may have been more.

Q. (Continuing.) Worked for you, did he ever disobey or refuse to do anything that you told him to do?

A. He did what I told him all the time.

Q. Did you have any trouble with him?

A. Not a bit in the world.

Q. Then, from your own knowledge, Mr. Harrell was not a hard person to get along with?

A. Well, while he was on my truck, he was not.

2707 Q. Would you consider that Mr. Harrell's accident was caused by negligence, or that it was an unavoidable accident?

A. I didn't see the accident. The only report I have is the straw boss' report—A. F. Staunton.

Q. What was his report?

A. Do you want the exact words to that report?

Q. Well——

A. "Damn carelessness."

Mr. MOORE. On whose part?

The WITNESS. Oh, Mr. Harrell's.

Mr. MOORE. Is that what Staunton said?

2708 The WITNESS. Staunton said that. That was his report to me.

2716 Redirect examination by Mr. MOORE:

Q. You answered the question generally, but I want to read into the record the names of the 13 men who were laid off on March 31st, as follows:

A. M. Branch, J. F. Dixon, J. L. Judge, C. R. Smith, T. N. Harrell, J. W. Clements, G. J. Pitman, S. W. Piland, J. W. Davenport, C. E. Portlock, Vernon Gofligan, Henry Blackful, and E. J. Edler.

Now, without calling any names, I now ask you whether any of those names, excepting Judge and Harrell, were members of the I. B. E. W.?

A. No that I know anything about it. They might have been.

Q. What is that?

A. Not that I know anything about it. They might have been.

Q. If you were very active, you would know?

A. At that time I was not really active. I am not so active now.

Q. I mean in March.

A. I was not so active in March.

Q. Well, to the best of your knowledge and belief, there were only two?

A. They were the only two, to the best of my knowledge.

2722 Trial Examiner Fort. Are you ready, Mr. Moore?
Mr. Moore. Yes, sir.

Hubert R. Fields, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Moore:

Q. Mr. Fields, you are one of the night dispatchers of the Virginia Electric & Power Company, I understand, working at the 18th Street garage?

A. Yes, sir.

Q. Working under Mr. Bishop?

A. Yes, sir.

Q. You work altogether at night?

A. Yes, sir.

Q. What were your hours during the spring and summer of last year?

A. Six to two, the same as they are now.

Q. 6 p. m.——

A. To 2 a. m.

Q. To 2 a. m.?

A. Yes, sir.

Q. Now, your duties as a night dispatcher are mostly clerical, are they not?

2723 A. Yes, sir; practically all clerical.

Q. Keeping the records of the men as they are turned in?

A. Yes, sir.

Q. Now, do you recall being present on the morning of May the 11th of last year when there was a meeting that was held in the Y. M. C. A. of a considerable number of car and bus operators, where Mr. Elliott addressed the meeting?

A. Yes, sir.

Q. Will you just state the circumstances under which you happened to be present.

A. Yes, sir. I had gone up there for the purpose of not exactly to attend a meeting; the Y. M. C. A. is a place where all the men have access to generally. There is one entrance to the door—I mean to the place there; in other words, if you shut the door, you shut everybody off the Y. M. C. A. Of course, I had not gone up there expressly to attend the meeting, but I was up there, and I was not asked to leave; so I stayed.

Q. Now, were you interested in the meeting in your capacity as a dispatcher or in your individual capacity?

A. Individual capacity as an employee just as much as any one of them.

Q. Did you understand that they were going to have discussion about wages?

A. The sign said something in regard to wages and
2724 hours. Naturally I was interested, being an employee.

Q. Did anybody suggest to you that you go up to the meeting?

A. No, sir; nobody suggested to me.

Q. You just did it of your own accord.

A. I often go up there frequently to get a bath or a hair cut.

Q. As I understand it, there was going to be a wage increase, and you wanted to go in on the talk?

A. Yes, sir.

Q. For yourself?

A. Absolutely.

Q. Now, were you there when the meeting began?

A. Yes, sir; I was there.

Q. And you stayed through the morning meeting?

A. Yes, sir; the morning meeting only.

Q. Do you recall about Mr. Bishop being there at the beginning of the meeting, and after saying a few words he retired?

A. Yes, sir; I remember him leaving.

Q. Why didn't you leave?

A. Well, I saw no reason why I should leave, because I was of the opinion, and I was told, that I could not join the union, being in a sort of semisupervisory capacity, I suppose; it could be construed that.

2725 Q. Did you ever make any report to anybody, Mr. Bishop or any supervisor or anybody else, about what occurred at the meeting?

A. No, sir; I never made mention of anything.

Q. Now, as the meeting broke up was there some question raised by one or more of the car and bus operators to you as to whether or not you should take part in the meeting?

A. As the meeting was broken up, why, several of them said something to me about my being there. Of course, I said I did not know I was not supposed to be there; that is all there was to it. Of course, I was already there.

Q. Well, now, did you attend any other meetings on account of the question that was raised?

A. No, sir; I never attended any other meetings except that one meeting.

Q. Did you ever talk to any of the men, the car and bus operators, after that about their union connections in any way?

A. No, sir; I had nothing to do with or say anything to anybody.

2731 Cross-examination by Mr. SPENCER:

Q. Now, who were you sitting with at this meeting of May 11th?

A. Who was I sitting with?

Q. Yes.

A. Well, Mr. Bishop's son was up there with me.

Q. Is Mr. Bishop's son an employee of the V. E. P. Company?

A. No, sir.

2735 JOSEPH F. TOMLINSON, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MILLER:

Q. Will you please state your name, age, and address?

A. My name is Joseph F. Tomlinson.

Q. And your age?

A. I am 33 years old.

2736 Q. And your address?

A. 4900 Sewells Point Road.

Q. And your occupation?

A. Line foreman.

Q. For whom?

A. The Virginia Electric and Power Company.

Q. Is it your duty to read the bulletin that are posted at Cove Street?

A. I generally read them.

Q. You saw that bulletin of April 26, 1937, signed by

2737 Mr. Holtzclaw, which I believe is referred to as Board's Exhibit No. 3, did you not?

A. Yes, sir.

Q. You saw from that bulletin, did you not, that Mr. Holtzclaw explained that the men had the right to join or form any kind of organization they saw fit?

A. Yes, sir.

Q. You also saw from that bulletin——

Trial Examiner FORT. May I suggest you ask the witness and not tell him the answer.

By Mr. MILLER:

Q. What did you understand from that bulletin as to the attitude of the company as to the men joining unions?

A. The way I saw it, they didn't have anything to do with which way they went; they could join any union they wanted to or do as they pleased.

Q. That the company would have nothing to do with it?

A. That is right.

Q. One way or the other?

A. That is right.

Q. But they should decide the question for themselves?

A. That is right.

Q. As foreman what did that mean to you as to your influencing or advising the men?

A. That meant to me that I should not advise them in any
2738 way either.

Q. Were you asked by any of your men your opinion or advice as to what they should do?

A. Yes, sir.

Q. What was your reply to them?

A. Any way they saw fit.

Q. You did not advise them what particular thing to do?

A. No, sir.

Q. I will ask you if you knew of or if you heard of any attempt by any of the foremen or other supervisory officials of the company to advise or to try to influence the men?

A. No, sir.

Q. On May 24th, 1937, you brought in your men at four o'clock in the afternoon, did you not?

A. Yes, sir.

Q. And that was a half hour before quitting time?

A. Yes, sir.

Q. At that time, as I understand it, the men assembled on the second floor of the garage?

A. Well, yes; they went there.

Q. You did not attend that meeting?

A. No, sir.

Q. What was your understanding about that?

A. Mr. Crafton told me I was not supposed to go over there or have anything to do with it.

Q. So, of course, you don't know what happened at that meeting?

2739 A. No, sir.

Q. Do you recall whether or not on the following day Mr. Crafton called a meeting of his foremen?

A. Yes, sir. He did not call me. We were in getting our orders that morning and he talked to us in the office and also the general foreman, Mr. May, and he said he wasn't to interfere one way or the other with the men in union activities.

Q. And I think you said you know of no attempt having been made?

A. No, sir; I do not.

Q. Did you at any other time bring in your men before four-thirty, the regular quitting time?

A. Not that I recall.

Q. Would that be such an unusual thing that you would recall it?

A. I think so.

2740 Q. I believe you worked T. N. Harrell, Jr.?

A. Yes, sir.

Q. When did he first come into your gang?

A. I was working out of town at Northwest, and it was in the spring of 1937, in the early spring.

Q. And did Mr. May assign him into your gang at that time?

A. Yes, sir.

Q. I think Mr. Harrell testified that you told him that you were either going to ask Mr. May for him or that you had done so. What about that?

2741 A. I did not tell him during that week, as I remember, but I did ask Mr. May. He stayed in the gang one week, and I asked Mr. May for him. I said he was a good worker and I would like to have him as a regular man in the gang. Mr. May told me he would see what he could do later on.

Q. When did he come to your gang again?

A. He came to my gang again in September. It was the 29th of September, if I am not mistaken.

Q. In 1937?

A. Yes, sir.

Q. What particular job were you engaged on at that time?

A. We were building a line to Tobe Smith's Oyster Roast.

Q. I think Mr. Harrell testified to an episode about the breaking of a tool or shovel handle, or something of the kind?

A. Yes; I remember that very well.

2742 Q. Was it while that work was going on?

A. Yes. It was the second day we worked there.

Q. What happened?

A. Harrell left some tools in the way of the truck. I ordered the truck backed up to set a pole, and the truck ran over one of the shovel handles and broke it.

I told Harrell he would just have to be particular with his tools if he stayed in the gang, that we couldn't have them broken up. Harrell didn't say anything to me, but he jumped on the truck driver and started cussing him out. The truck driver came out of the cab, and they acted as if they were going to fight. I told them they couldn't fight on the job, but if they wanted to fight I would give them time out. That is all it amounted to.

Q. Who was the truck driver?

A. Emmett Swink.

Q. You felt that the breaking of that shovel handle was due to Harrell's neglect?

A. Yes, sir.

Q. And for that reason you reprimanded him?

A. Yes, sir.

Q. How long did he stay in your gang at that time?

A. I think it was around four weeks.

Q. Did he come to your gang again?

A. Yes.

2743 Q. About when?

A. He came into the gang around the latter part of October, if I am not mistaken.

Q. Mr. Harrell testified that on that occasion you told him that Mr. May had put him with you under the hammer and that he asked you for a definition and that you told him that Mr. May told you he was hotheaded and was an agitator and hard to get along with.

Did you make that statement at the time to Mr. Harrell?

A. No, sir; I did not. I called Mr. Harrell off to one side that same morning, and the reason I called him to one side was that while riding down to the pole pile after leaving that morning I could hear him doing some loud cussing going down Church Street, and the people on the side walk could hear it as well as myself.

When we got to the pole pile I called Harrell to one side and I told him about his hot-headedness. The reason I knew about it was that little mess we had at Tobe Smith's, or that little argument. I told him this loud cussing couldn't go on in the gang, especially in the residential section, and if he wanted to cuss that when we got out five miles from any house or anything I would help him cuss too.

Q. Did you tell him Mr. May put him with you under the hammer?

A. No, sir. I told him, "I know you are hot-headed and Mr. May knows you are hot-headed, and everybody else

2744 at the plant knows that you are hot-headed.' I said, "If you try to get out of this habit you can get along fine in this gang."

That is all that was said.

Q. Did Mr. May tell you he was putting him with you under the hammer?

A. No, sir.

Q. Mr. May didn't say anything like that to me. He just assigned him to the truck.

Q. During that period did you have a job on Princess Anne Road?

A. Yes.

Q. Where you had some trouble with Mr. Harrell?

A. Yes.

Q. Tell us briefly about that episode?

A. As nearly as I can remember, we were setting a pole or replacing one, rather, that had been broken by an automobile. There had been a fight the night before or a couple of nights before that, and they were arguing about the fight, and the men on the truck were arguing about it.

I told Mr. Harrell we had a pole to set, and push up on the pipe. I told him about three times, and he didn't pay any attention to me. Then I kind of talked loud to him and I told him, "Push up on the pipe and let's set the pole, and not so much talking."

I could see that he did not like that very well. So I stood off to one side while they were tamping the pole
2745 he said, "Yes, that was a good fight the other night, and there is going to be a better one, and I hope everyone of you can be here to see it."

He was talking about me, I knew. I didn't say anything.

He brought it up again and said about the same thing. I said, "Harrell, if you mean that for me we will take time out or go into a vacant lot and fight it out. If you do not want to do that I will meet you after working hours any night."

I said "My father always told me a barking dog seldom bites, and I believe it."

He said, "I understand you asked Mr. May for me," and I said I did.

He said, "You said I was a good worker," and I said, "I did."

"And you told a damn lie."

Well, I walked away from him and let him cool down.

So about ten minutes after that he walked over to the water keg to get a drink of water, and I followed him over and I told him then, "Harrell, you have been talking about going to work for the Ford Motor Company and all. You can't make it any place if you are going to act this way. Why don't you pull yourself together and forget all of this hot-headed stuff. We can get along. I will treat you as good as anybody else will."

That was all that was said, I think. He admitted he was hot-headed.

2193 Cross-examination by Mr. LATHAM:

Q. As a matter of fact, have you not asked a third-class lineman to cut 2300 straight through, when there was not a

A. Oh, yes. I have.

Q. Is that a safe condition?

A. I know just what every man I have can do. I worked them long enough to know what they can do.

Q. Has Harrell ever done that type of work for you?

A. I think he has; yes.

Q. He was made a third-class lineman as of August last year, and you have allowed him to go on the hot stuff through as much as 2300, and you have worked him 4000, or a man of his type, as a third-class lineman, at the present time, on hot corner poles.

A. Certainly. That is the only way they are going to learn—that is, to get up there and do it.

2794 Q. And you have told us that you required Harrell——

A. Yes: I don't think it was out of the practice to work a man by himself on a wire. If I have a little job to do, I do that. I had that much dependence on Harrell, to go ahead.

2820 By Mr. MOORE:

Q. When you referred a moment ago to the point that you understood you could do what you wanted in regard to union activity, as I understand it, you meant so far as you yourself were concerned?

A. Yes, sir. I myself could join.

Q. Is there any doubt or question in your mind about the fact that you were instructed that you were not to interfere with other men or try to influence them as to what they should do about any union?

2821 A. I know that. Mr. Crafton told me, and also the rest of the foremen in the office, that we should not interfere with any way that the men wanted to go and not to influence them in any way, shape, or form: that we had nothing to do with any way the men went. And Mr. Crafton did the same thing about me going in and joining. I felt if I wanted to joint the I. B. E. W. I could do it; but I did not feel that I wanted to join it, and I did not join it.

2837 J. C. TWEEDY, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

2838 Direct examination by Mr. MILLER:

Q. Give your name, age, residence, and occupation to the Reporter, Mr. Tweedy.

A. J. C. Tweedy, my address is 809 West 41st Street, Norfolk.

Q. Your age?

A. My age is 49.

Q. And your occupation?

A. Line foreman for the Virginia Electric & Power Company.

Q. Mr. Tweedy, speak distinctly and loudly, so that everybody can hear you.

When and in what capacity did you enter the service of the Virginia Electric & Power Company?

A. I entered the service of the Virginia Electric & Power Company in June 1922 as a lineman helper.

Q. And you have worked your way on up to lineman foreman?

A. That is right.

Q. Obtaining your promotion when?

A. In January, I think, 1929 or 1930, or around there.

Q. Now, on May 24, 1937, you received instructions to bring your men into Cove Street at 4 o'clock p. m., did you not?

A. I did.

Q. And that was one-half hour before quitting time?

A. Right.

Q. And there the men assembled on the second floor of the garage?

2839 A. Well, I put them off the truck in front of the garage, and they went in the garage. I don't know whether they went upstairs or downstairs. I put them out, and I didn't go any further.

Q. You do not know anything that occurred at that meeting?

A. I do not.

Q. Did you ever after that bring the men in for another meeting or meetings, prior to 4:30, the usual quitting time?

A. I did not.

Q. Do you recall a meeting in Mr. May's office, the next morning, at which Mr. Crafton was present?

A. I was not there. I had gone to the storeroom, and I was told about that in the storeroom by the other foremen. I had gotten my orders and left the office.

Q. As a result of that conference did you receive any instructions as to the men being free of any interference from the foremen?

A. I did.

Q. What were you told?

A. I was told that I was not to have anything to do with them in any way; that the men were free to organize in any way they wanted to.

Q. Now, Mr. T. M. Harrell testified—were you present when he was testifying?

A. I was here part of his testimony, I think.

2840 Q. (Continuing.) that on an occasion he had a run-in with you down in North Carolina, and you docked him

two hours or two and a half hours and threatened to have him walk back from the job. Now, will you please tell the Examiner just what happened on that occasion?

A. Well, to the best of my knowledge, I started Mr. Harrell and Mr. Griffin out that morning sharpening poles. We were setting poles between Bray's Corner and Goose Creek, I believe it is, North Carolina. I think Mr. Harrell and Mr. Griffin finished sharpening poles somewhere around one o'clock, and came back to the truck, and it was raining just a little, but I didn't think it was hard enough to knock off, and about the time they came to the truck a hard shower came up, and we knocked off and assembled over in the porches along the highway. That is, the men, and I was in the truck.

It slacked up on the rain, and I immediately called the men back to the job. Coming back, Mr. Harrell was doing a good deal of complaining, and I reprimanded him. I don't know just what words I used, but I think I told him that he was getting docked for the time he wouldn't open his mouth, that I had been in the rain with them, and I didn't ask my men to do anything I wouldn't do myself.

Consequently, I was calling them back to work. I didn't think it was too hard to work in.

We went on and set poles along about, along about 10 or
2841 12 poles, I imagine, and the rain picked up just a little bit, and he again began to complain.

This time it kind of got on my patience, and I told Mr. Harrell to go across the road and get in the porch, the store porch, out of the rain, and it seemed that he at this point realized that I meant what I was talking about, and he said, "Well, now, I can make it if the others can." I told him I didn't want him to make it. I didn't want him to get wet, and I meant for him to go over and get on the porch; if he didn't, I would send him back to Shiloh, and, if I remember right, I think I told him I would put him in the truck and send him to Norfolk. I told him at that time that I was docking him for the balance of the day, which was—I don't remember the hours.

Q. And you did dock him?

A. Yes; I docked him.

2842 Q. For that time?

A. Yes, sir.

Q. What was said about walking back to Shiloh, or something like that?

A. That is what I told him—that he could walk back home, just what I brought in just now.

Q. Mr. Harrell said something about you and him constantly joking.

A. I did.

Q. Was this particular matter a joking matter?

A. No, sir; not with me, because I was anxious to finish the job and get back to Norfolk.

2847 Cross-examination by Mr. HILTON.

Q. Now, was it on May 25th or May 26th that you received instructions in connection with union organization activities?

2848 A. I received my orders from Mr. Crafton—through Mr. Crafton, in other words.

Q. On what date was that?

A. I couldn't say. I think it was on the 25th.

Q. Who actually gave you the instructions?

A. I don't remember. It was one of the foremen told me in the storeroom.

Q. Do you recall what the instruction [illegible]

A. To the best of my memory it was that we were to have nothing to do with the union in any way.

Q. In the event that any man should ask for advice in connection with forming or joining any union, what were you to do?

A. I was to leave it strictly to the men. It was their union.

Q. And were you to tell the men that?

A. I think I did.

2861 LORA P. WALLACE, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MILLER:

Q. Give the Reporter your name, age, residence, and occupation, please, and speak distinctly so that everybody can hear you.

A. Lora P. Wallace; 38; 803 Faquire Street.

Q. Your occupation?

A. Lineman.

2862 Q. For the Virginia Electric & Power Company?

A. That is right.

Q. When and in what capacity did you enter the service of the Virginia Electric & Power Company?

A. That was in February 1924, as a lineman.

Q. You had previously had experience as a lineman?

A. Yes, sir.

Q. And when were you made foreman?

A. Around April or May in 1936.

Q. Now, on May 24, 1937, you received instructions, did you not, to bring your men in that afternoon, at 4 o'clock?

A. Yes, sir.

Q. That was half an hour before the usual quitting time?

A. That is right.

Q. State whether or not at any other time you brought your men in ahead of quitting time for any meeting.

A. No, sir.

Q. The employees did meet on the afternoon of May 24, did they not?

A. Yes, sir.

Q. You do not know what occurred at the meeting?

A. I do not.

Q. If any of your men attended any later meeting at Cove Street, did they do it on the company's time?

A. No, sir.

2863 Q. Now, do you recall that the next day there was a conference at Mr. May's office, where Mr. Crafton spoke to the foremen about the company's attitude to the men's forming organizations?

A. I do.

Q. Did you receive instructions there?

A. Yes, sir.

Q. What were the instructions to the men?

A. We were not to have anything to do with the men concerning their union activities or to advise them either way.

Q. They were to be left absolutely free.

A. That is right.

Q. Did you conform to those instructions?

A. I did.

Q. Mr. Wallace, did you know or hear of any foreman or other supervisory officials of the company attempting in any way to interfere, influence, or advise the men as to union affiliation?

A. No, sir.

2864 Q. Mr. T. N. Harrell, Jr., testified that Mr. May told you to put Mr. Harrell on a digging set and at that time he was working with a crew of half negroes and half white men, and that the negroes were taken away from the digging set and he, Mr. Harrell, was put with negroes. Tell us about what happened at the time he is talking about.

A. At the time he was talking about we were setting poles and we were on Highway No. 27 between Dozier's Corner and Oak Grove. While we were at Dozier's Corner setting a pole I was

standing off to one side and, of course, all of the fellows were around there. It was late in the afternoon. And Davenport and Harrell had a little argument. How it started I don't know. But I did get there in time to hear Harrell's statement that he made to Davenport.

Q. What was that statement?

A. He said, "You meet me at 4:30 with Henry Turner under your arm and I will whip both of you bastards."

Q. What did you do then?

A. Davenport was acting like he wanted to go on him. So I taken Davenport off to one side to kind of pacify him, which I did.

Q. Did you report that matter to Mr. May, the general foreman?

A. I did that night.

Q. Had Davenport beaten you to it?

A. Yes. He had gotten there a few minutes ahead of me.

Q. And Mr. May inquired of you as to the details of it?

2865 A. Yes, sir.

Q. As a result of that, did Mr. May make any suggestion to you?

A. He did.

Q. What did he say?

A. He said, "About the only thing we can do with that boy, I guess, is to put him off to himself. He can't get along with the men."

Q. How did you put him off to himself?

A. I gave him a digging set and put him digging holes.

Q. Your crew was composed partly of white and partly of colored men?

A. That is right.

Q. Did Mr. Harrell work with negroes any more than you and the other members of your crew?

A. No, sir.

2867 Q. Mr. Harrell also testified that while he was working in your gang Mr. May came to you and said that he had to make another transfer off of Mr. Fowler's truck, and that you asked him what kind of a man he wanted, and Mr. May replied, "I want a man who can get up and down a pole and also put out anchors," and then you said "I hate like the devil to do it, but I will let you know in the morning." He also said that Mr. May said, "I am going to break up that union agitating if I have to fire every man on Cove Street."

Q. Did you hear Mr. Harrell testify?

A. Yes.

Q. Did you hear him on that point?

2868 A. Yes, sir.

Q. Did he say substantially what I have said?

A. I think he did; yes, sir.

Q. Did Mr. May make any statement to you that he was going to break up that union agitating if he had to fire every man at Cove Street?

A. He did not.

Q. What actually occurred about Mr. May speaking to you about a transfer of a man?

A. Mr. May met me in the storeroom that morning as I coming out of the store room door, and he asked me, "I have got to have a man," and I said, "What kind of a man do you want?" He said, "I want one that can get up and down poles." He waited a few seconds and then said, "Never mind. Go ahead on your job." That was all that was ever said to me about the man.

Q. Did he say where he wanted to make the transfer to or from?

A. He did not; no, sir.

Q. Did he mention Mr. Fowler's name at all at that time?

A. Not to me; he did not.

2875 Cross-examination by Mr. HILTON:

Q. When was the last time before this occurrence that you had reported to Mr. May, let us say, any occurrence similar to Harrell's?

A. I had not report any.

Q. And I believe you stated before you had a chance to report it that Davenport had been there already?

A. He got in there a few minutes ahead of me through the other door.

Q. Did you ever learn what Mr. Davenport told Mr. May with regard to the incident?

A. I can't say that I did; no.

2876 Q. Did you actually report the matter to Mr. May?

A. I did.

Q. What did Mr. May say about it?

A. He said, "That boy seems to have trouble right along, and the best thing to do is to put him off by himself. Give him a digging set."

Q. And had you had any trouble with Harrell before that time?

A. The men in the gang had.

Q. You didn't even have any trouble with him then, did you?

A. No; I didn't have any trouble with him.

Q. Had the men ever complained to you about Harrell's attitude?

A. They had.

Q. And was he quarrelsome?

A. He was.

Q. Did you ever have to call Harrell down because of his quarrelsome attitude?

A. I have.

2877 Q. And did you at any time ever take, let us say, a negro off of a job and put Harrell on his job?

A. On this one occasion digging holes.

Q. Had you ever done that before?

A. Had I done what before?

Q. Had you taken a white man off of a job and put a negro on the job?

A. No.

2879 By Mr. LATHAM:

Q. You testified as to hearing some expression of Harrell's prowess as a fighter. Do you know what caused that final altercation?

A. No.

Q. You do not?

2880 A. No.

Q. Did you hear Davenport in any discussion with Harrell at any time during that day?

A. I don't believe I had.

2884 By Trial Examiner FORT:

Q. On this Davenport thing, what did you say caused the difference between Davenport and Harrell?

2885 A. What caused the difference?

Q. Yes.

A. Well, I couldn't say what caused the difference. I don't know how the argument started. I was off a little way from them.

Q. And the only one you had to quiet down from fighting was Davenport; was that it?

A. Well, both of them. Both of them were a little sore, from what I heard.

Q. I understood you to say that you took Davenport off.

A. I did.

Q. To keep him from getting into a fight?

A. He looked like he was ready to go on him.

Q. What did you do with Harrell? You did not take him off at the same time?

A. No; I couldn't do that.

Q. But you did take Davenport off?

A. It looked like he was ready to go on him.

Q. What discipline did you give Davenport?

A. I just told him not to start to do anything on the job.

Q. Why did you give Harrell discipline instead of
2886 Davenport when you did not know how the thing started or who was responsible for it, and when Davenport was the one that you had to keep from fighting?

A. Well, Harrell had continuously had trouble with all the men in the gang from time to time. In other words, the men kept coming to me and telling me of the argument they had with him. It was all of them.

Q. You were punishing him for his general reputation rather than for what he did at that time?

A. Well, we had to do something; yes, all the way up.

Q. What had you ever said to Harrell about it before this?

A. I have taken Harrell off at times and talked to him and told him why didn't he cut this stuff out, and he promised me time and time again he would, and it would go along for two or three days, and he fell out again all over.

2892 Redirect examination by Mr. MILLER:

Q. What was the reason that you put Mr. Harrell on a digging set? What was the real reason?

A. Because he couldn't get along with nobody in the gang.

Q. Was it punishment?

A. I wouldn't class it as punishment.

Q. Or was it to put him off by himself?

A. To put him by himself.

Q. Did it have anything to do with any union affiliation, or anything of that kind?

A. No, sir.

2898 JACK W. DAVENPORT, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MILLER:

Q. Give your name, age, and residence to the Reporter, please, and speak distinctly.

A. Jack W. Davenport, 2226 Bleech Avenue, Norfolk.

Q. Your age?

A. 26.

Q. Now, Mr. Davenport, I am going to ask you, please, to keep your voice raised so that everybody can hear you distinctly.

By whom are you now employed, Mr. Davenport?

A. Parker. He is with the city.

Q. You are really employed by the city of Norfolk at this time?

A. Yes.

Q. In the Forestry Department?

A. Yes.

Q. Tree trimming work especially, is it not?

A. Yes.

Q. You formerly worked for the Virginia Electric & Power Company, did you not?

2899 A. Yes, sir.

Q. When did you first enter the company's service?

A. To give you the exact date I do not know. It was in March 1936.

Q. How did you come in? In what capacity?

A. A laborer.

Q. You said you were laid off?

A. Yes, sir.

Q. In March 1938?

A. Yes, sir.

Q. And what was your rating then?

A. Lineman.

Q. Lineman helper?

A. Yes.

Q. Now you heard Mr. Pat Wallace, foreman Wallace, testify a few minutes ago, did you not?

A. Yes, sir.

2900 Q. About an argument or a fuss that you had with Mr. T. N. Harrell, Jr.?

A. Yes, sir.

Q. When did that occur?

A. I don't know the exact date. We were working on a line at Oak Grove.

Q. This year?

A. Yes, sir.

Q. Some time this year?

A. Yes, sir.

Q. The early part of the year?

A. I think somewheres around February.

Q. You think it was February?

A. Yes, sir.

Q. Now, who started that argument or fuss?

A. He was cussing, and I said, "That is all right. I will put Henry Turner on you." So that is the way it started.

Q. He was cursing you?

2901 A. Yes, sir.

Q. And you said you would put Henry Turner on?

A. Yes, sir.

Q. Because he had a previous fight with Henry Turner?

A. Yes.

Q. What did he say when you told him that?

A. He told me, he said, "After 4:30 bring him in there," and he called both of us bastards.

Q. What had happened with Turner?

A. I think he had a little run-in. I don't know. What I heard different ones speak.

Q. You had heard that he had a run-in, and that was the remark you made to him?

A. Yes, sir.

Q. When he called you and Turner bastards did he smile?

A. No, sir.

Q. Was he joking in any way?

A. It didn't look like it to me. In fact, if it had been a joke, I would not have taken it up.

Q. What did you do when he said that to you?

A. Well, before I could get a chance to do anything, Pat told us to cut it out—that was my foreman, Pat Wallace. He told us he was not going to have it on the job. So he carried me down the line and started me working there, and I did.

2902 Q. Before you could take it up——

A. Yes.

Q. —your foreman came and stopped you?

A. Yes.

Q. Now, were you the only man in that gang that Mr. Harrell had trouble with?

A. No, sir. He argued with most everyone in the gang, and also a fellow by name of Lucas had warned him not to cuss him, for if he did there would be trouble, and he had asked for time off then, and he never has cussed him.

Q. Now, you were in the company service in the line department for about two years, were you not?

A. Yes, sir.

Q. In that time in how many gangs and under how many of the foremen had you worked?

A. Everyone down there.

Q. You had worked under every foreman and in every gang?

A. Yes, sir.

Q. With what other men in the line gangs did you have any trouble?

A. No other man at all.

Q. You never had any trouble with any of the other men at all?

A. No, sir.

Q. Had you worked in previous gangs with Mr. Harrell?

2903 A. Yes, sir.

Q. At the same time?

A. Yes, sir.

Q. How was he with the other men in those gangs at that time?

A. Arguing, fussing, cussing.

Q. And did that keep the men upset?

A. Some of them. Some of them doesn't pay any attention to it; some of them is kind of get sore at him.

2912 Cross-examination by Mr. HILTON:

Q. Did you hear about the one given in Richmond on May 24th?

A. Yes; I have heard of it.

Q. Who told you about that speech?

A. Just hearing different ones talking about it. I never 2913 paid much attention to it because I don't believe in no union.

Q. You don't what?

A. I don't believe in no union and I have never been in a union before I got into this one.

Q. You never have believed in unions?

A. I have never believed in them.

Q. Was it your understanding that the company wanted an independent organization?

A. Yes.

Q. And was it your understanding that was the reason for having the speech on May 24th, 1937, in Richmond and in Norfolk?

A. It was.

Q. Was it because of that that you joined the I. O. E.?

A. I did.

Q. Didn't you think you were going to better your job or your position and keep it by becoming a member of the I. O. E.?

A. Yes.

2916 Q. Had you discussed the I. O. E. with other employees 2917 in your gang, let us say?

A. I have discussed it amongst the boys.

Q. Was it the opinion of the men that the I. O. E. would be a better organization to join than any outside organization?

A. Amongst the boys?

Q. Yes.

A. Yes.

Q. You knew, of course, that the I. O. E. wasn't affiliated with any international organization, didn't you?

A. Yes.

Q. And you knew that the I. O. E. was not a part of the C. I. O.?

A. Yes: I knew that.

Q. And you knew that the I. O. E. was not a part of the A. F. of L.?

A. Yes: I did.

Q. Did any of your foremen ever talk to you about the I. O. E.?

2918 A. No, sir.

Q. You are sure of that, are you?

A. I am sure.

Q. Did you ever ask any of your foremen for advice as to what labor unions you should join?

A. Well, I asked my foreman, Pat Wallace, one day, and I said, "The boys are trying to get me into this. I don't know anything about any union. What do you think of it?"

He said, "Use your own judgment."

2920 Q. Do you know Foreman Fowler?

A. I do.

Q. Did you ever have any trouble with him?

A. No.

Q. You didn't have any trouble with him when you were working on a trouble truck?

A. Well, no more than a little argument.

Q. Just a little argument?

A. Yes.

Q. Didn't Mr. Fowler have you transferred on account of that argument?

A. Not that I know of.

Q. Didn't you ask for a transfer as a result of that argument?

A. I asked to be transferred because I wanted to get the exercise.

Q. Because of what?

A. I wanted to get the exercise—work.

Q. Exercise?

A. Yes.

2921 Q. You wanted to build up your body?

A. I did.

Q. You testified as to having no other trouble. Do you fight very often?

A. Not very often.

Q. As a matter of fact, didn't you have an argument not long ago with a Motor Freight man and whipped him?

A. I did.

Q. You fight fairly often, don't you?

A. Not often.

Q. But whenever it becomes necessary?

A. I am man enough to protect myself.

Q. I can see that. Why did Harrell curse you, as you claimed?

A. I don't know.

Q. Just out of an open sky he just called you a bastard?

A. Just because I was kidding him about Henry Turner, I guess.

Q. You were nagging him about Henry Turner?

A. After he cussed me.

Q. How is that?

A. After he cussed me, that is when I told him I would put Henry Turner on him.

Q. Why were you going to put Henry Terner on him?

A. Just kidding in a friendly way. I thought he was joking at first.

2942 S. R. WHITEHURST, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

2943 Direct examination by Mr. MILLER:

Q. State your name, your residence, and your occupation.

A. S. R Whitehurst, 1041 Tunstall Avenue, Norfolk, Virginia, age 48; line foreman.

Q. Did you say you are a line foreman for the Virginia Electric & Power Company?

A. Yes, sir.

Q. What gang do you have charge of?

A. Trolley gang.

Q. The trolley gang working in Norfolk?

A. Yes, sir.

Q. Now, Mr. Whitehurst, the gangs were brought in ahead of time on May 24, 1937. At that time, did you bring your gang in?

A. No, sir; I wasn't with the gang at that time. I was sick.

Q. You were sick?

A. Yes, sir.

Q. The man who substituted for you was the one who had to bring your gang in?

A. Yes, sir.

Q. Did you later receive any instructions as to what
2944 the attitude of the foremen should be in connection with the men forming or joining unions?

A. Yes, sir; I did.

Q. What were your instructions?

A. That we should not have anything to do with the men, that they could join any union that they wanted to.

Q. Leave them entirely free?

A. Yes, sir.

2969 HUNTER E. WINN, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MILLER:

Q. Will you please state your name?

A. Hunter E. Winn.

Q. What is your age?

A. I am 38 years old.

Q. And your residence?

A. 901 Oakwood Street.

Q. In Norfolk?

A. Campostella, Norfolk, Virginia.

Q. And your occupation?

A. Cable foreman.

Q. When did you start to work with the Virginia Electric and Power Company, and in what capacity?

2970 A. December 1918.

Q. As what?

A. Lineman helper. I was driving a truck at that time.

Q. When were you made foreman of the Cable Department?

A. In 1932.

Q. In 1932, you say?

A. Yes.

Q. Did you on May 24, 1937, bring your gang in to Cove Street at four o'clock?

A. I notified each gang to come in at four o'clock p. m. on May 24th.

Q. That is a half hour before the usual quitting time?

A. Yes, sir.

Q. Do you know that the men assembled at the Cove Street Garage?

A. I brought them to the plant and went into the office, and they assembled.

Q. And they assembled in the garage?

A. Yes.

Q. What happened at that meeting? You do not know?

A. No, sir.

Q. Did you at any later time bring in the men ahead of the quitting time to attend any meeting?

A. No, sir.

Q. Did you receive any instructions as to what your
2971 duties should be in connection with the men forming or joining any organization?

A. Yes, sir.

Q. What did they instruct you to do?

A. We were not to interfere with the men in any way in regard to the union.

Q. They were to be left free?

A. Yes.

Q. And untrammelled?

A. Yes. They could do as they pleased.

Q. Has that instruction been changed?

A. Not to my knowledge; no, sir.

Q. Have you ever attempted to interfere with or influence or advise the men as to their union affiliations?

A. I don't recall I did at any time. No, sir; I did not.

Q. Did you know of or did you hear of any attempt on the part of any other foremen or other supervisory official to influence the men or advise them as to any labor union affiliation?

A. No, sir.

2979 Cross-examination by Mr. HILTON:

Q. Did you ever receive any instructions as to what you should do in the event any of the men came to you and asked you for advice as to any labor organization?

A. Yes.

Q. When did you receive those instructions?

A. Well, I couldn't say right off how long it was after May 24th. I don't know just what date it was.

Q. Would you say that it was a day or a week or a month after May 24, 1937?

A. I think it was some time over a week or more.

2980 Q. Approximately a week later. Is that right?

A. Somewhere later than that, I expect. I don't know just when it was.

Q. I didn't mean to cut you off.

A. I don't know just when that was.

Q. Who gave you those instructions?

A. I think we were notified in Mr. May's office.

Q. You say you think?

A. Yes.

Q. Do you mean that is your best recollection, that Mr. May did give them to you?

A. Yes.

Q. Were there any other foremen present when you received those instructions?

A. I believe there were.

Q. It is your best recollection that you did not receive those instructions individually but with a group of other foremen? Is that right?

A. As I say, I think there were some other foremen present when I was instructed.

Q. How long did Mr. May talk to you on that occasion in regard to the instructions?

A. I couldn't say right offhand how long it was.

Q. Would you say it was two minutes, ten minutes, or a half hour, or two hours?

2981 A. I would figure it was around ten or fifteen minutes.

Q. You would figure it was around ten or fifteen minutes?

A. Yes.

Q. Do you recall what Mr. May told you on that occasion?

A. Well, maybe not in his exact words. He said that we were not to interfere with the men in any way at all with regard to the union.

Q. Was that all that he said? I mean substantially?

A. I don't recall just all he had to say with regard to it except that. I do remember his saying that.

Q. Did he specifically tell you that in the event any man asked you for your opinion with regard to labor organizations——

A. He told us that in substance we were not to interfere with them or give them any advice in any way.

Q. Did he mention any preference, let us say, between the A. F. of L. and the C. I. O.?

A. No, sir.

Q. Or, let us say, between the A. F. of L., the C. I. O., or the Independent Organization?

A. No, sir.

Q. Those instructions were oral instructions, were they not?

A. For any organization that they might see fit to join; that we were not supposed to interfere with any organization that they might see fit to join.

Q. And the instructions that were given were oral in-

2982 structions? That is, just verbal instructions were given you, weren't they?

A. At that time, you mean?

Q. Yes.

A. Yes.

Q. Did you ever receive any written instructions with regard to your attitude toward unions?

A. I don't recall any.

2983 Q. Was it your understanding that if you violated any instructions that were given to you by Mr. May, you would be fired?

A. If he had made the remark, I didn't get it.

Q. Well, was it your understanding that if you did violate

2984 those instructions you would be fired?

A. No. I don't know whether I heard that remark made or not.

Q. I am not asking about the remark, but was it your understanding that if you violated any of the instructions that he had given you, you would be fired?

A. I had no right to feel like I was going to get fired. I had sense enough not to interfere. I didn't know what would happen if I did interfere.

Q. In other words, you did not feel that you would be fired if you had violated the instructions?

Mr. MOORE. He didn't say that.

The WITNESS. I didn't say that.

By Mr. HILTON:

Q. I am asking you.

A. No; I do not know what would have happened to me.

Q. Did you ever hear of those instructions being violated by any of the foremen?

A. I never heard anything.

Q. And, of course, you did not violate any?

A. Not to my knowledge, I did not; no, sir.

Q. Not that you know of?

A. Not to my knowledge.

Q. Now, you were asked a question with respect to a company union. Do you remember that?

A. I was asked?

2985 Q. Yes.

A. In respect to a company union?

Q. Yes; that is right, with respect to breaking a company union, and you denied making any statement such as that.

A. I don't know anything about a company union.

Q. Do you know what a company union is?

A. No, sir.

Q. Had you ever heard of them before this hearing?

A. I don't know whether I have or not.

Q. Now, did you ever talk to any of the men with respect to their joining the I. B. E. W.?

A. I don't recall any.

Q. Well, as far as you know did you ever do or say anything which would discourage any of the men in your gang from joining the I. B. E. W.?

A. I don't think I said anything to them one way or the other in regard to discouraging them from joining the I. B. E. W.: no, sir.

Q. Do you recall whether or not you ever said or did anything which would encourage any of the men in your gang to join the I. O. E.?

A. No, sir.

3008 S. D. ABERNATHY, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MILLER:

Q. State your name, age, residence, and occupation.

A. S. D. Abernathy, 39, 324 Windmere Avenue, Norfolk.

Q. You are line foreman for the Virginia Electric & Power Company, are you not?

A. Yes, sir.

Q. When did you come with the company and in what capacity, Mr. Abernathy?

A. I came with the Virginia Electric & Power Company in August, 1920.

Q. In what capacity?

A. Lineman.

Q. When were you promoted to foreman? What was your first promotion?

A. My first promotion was after Stone & Webster had taken over the property, in 1935. I was promoted and immediately rated as first-class lineman.

3009 Q. Then what was your promotion?

A. I was promoted to underground foreman in 1927—I think 1927. * * * I was the underground foreman in charge of the excavating.

Q. Now, on May 24, 1937, did you or not receive orders to bring your gang in at 4 o'clock in the afternoon?

A. I did.

Q. From whom did you receive those orders?

A. Mr. May, the general foreman.

Q. You did bring the men in?

A. Yes, sir.

Q. What became of them after they came in?

A. They assembled on the second floor of the Cove Street garage, so far as I know. I seen them go up the ramp, anyhow, upstairs.

Q. Do you know what was up there?

A. No, sir; I do not. I understand that Mr. Holik made a talk to the men up there.

Q. Now, you brought them in that day half an hour be-
3010 fore the ordinary quitting time, did you not?

A. Yes, sir.

Q. Did you at any later time bring the men in ahead of the ordinary quitting time?

A. No, sir; not to my knowledge.

Q. Now, did you attend a meeting the next day in Mr. May's office, when Mr. Crafton gave you some instructions with reference to union activities of the men?

A. That was on the next morning after the men had met the evening before, I believe. Mr. Crafton gave us instructions in Mr. May's office.

Q. What were those instructions, Mr. Abernathy?

A. As well as I can remember, Mr. Crafton told us that we did not have anything to do with the men as far as organization; that the men could join any union that they seen fit, or affiliate with any union they see fit; and for the foremen not to influence the men one way or the other, to let them go whatever way they chose to go.

3011 Q. Now, state whether or not it was definitely fixed in your mind at that time that you must not in any way interfere, influence, or advise the men about labor affiliations.

A. It was.

Q. Did you adhere to those instructions?

A. I certainly did.

Q. Please state, Mr. Abernathy, whether or not you knew or heard of any of the foremen attempting to interfere, influence, or advise the men as to labor affiliations.

A. I did not hear of any foreman asking the men to join anything, or advise them what to join.

3022 Q. Mr. Abernathy, in 1936 what happened in connection with the construction work of the company?

Mr. MOORE. Do you mean in 1936?

Mr. MILLER. Yes; 1936.

The WITNESS. In 1936 and 1937 the Virginia Electric and Power Company had quite a lot of new lines to build all over the eastern part of Carolina; anyway, down near Manteo and Nagshead, North Carolina. In fact, we had a new line from Norfolk to Virginia Beach in 1936, I believe, and we had lots of new construction work.

3023 By Mr. MILLER:

Q. You had a very large increase in new construction work, as I understand it.

A. Yes, sir. We surely did.

Q. As a result of that a number of additional employees in the line department were taken on, were they not?

A. Yes, sir; in 1936 and 1937.

Q. And additional gangs were created?

A. Yes, sir. I think there were some two or three new gangs put on. I don't know just how many there were.

Q. About the latter part of 1937 what was happening to that work?

A. That work was playing out in the latter part of 1937 and the first part of 1938.

Q. In the late part of 1937? Well, in the first part of 1938 what class of work was being done? What class of work were the line crews almost exclusively confined to?

A. I think practically all of the line gangs the first part of 1938 were on maintenance work.

Q. What did you anticipate as a result of this slacking off of the new construction work?

A. A lay-off.

Q. You expected a lay-off?

A. Yes, sir; I certainly did.

Q. Did you expect it would be delayed as long as it was?

A. No, sir. I thought it would come in January or Feb-
3024 ruary, because I knew the work was slacking off with the company.

Q. And has there been any real pick-up in new construction work since the lay-offs?

A. No, sir. Absolutely not.

Q. Mr. Harrell never worked for you?

A. No.

Q. How about Mr. Judge?

A. No, sir.

Q. Neither of them worked for you?

A. No, sir.

3027 Cross-examination by Mr. HILTON:

Q. Of course, you did not attend the meeting in Norfolk on May 24, 1937, where Mr. Throckmorton gave his speech; did you?

A. No, sir.

Q. Did you hear that speech being read in Norfolk on May 24, 1937, by Mr. Throckmorton?

A. I don't know as I did.

Q. You received certain instructions a short time after that, did you not—and by "instructions" I mean instructions as to what the foremen should do in the event that union organization activities started among the employees of the plant.

A. The only instructions that I received was in Mr. May's office on about the 5th or 6th of May, I believe.

Q. The 5th or 6th of May?

A. I think that was it.

3028 Q. Now, when you did receive these instructions was there any mention made of the fact that a speech had been given on May 24th?

A. Who gave the speech on May 24th? Mr. Throckmorton?

Q. Mr. Throckmorton, in Norfolk.

A. That is the same time they had the speech in Richmond?

Q. That is right. Mr. Holtzclaw addressed the representatives in Richmond, and Mr. Throckmorton in Norfolk.

A. Well, on the morning of the 5th is the only instructions that I have ever received from any company man.

Q. And that was May 5, 1937?

A. On the morning of May 5th, as well as I can remember; yes.

Q. Who gave you those instructions?

A. Mr. Crafton.

3029 Q. Did he give those instructions to you individually or with a group of other foremen?

A. No, sir; there were several foremen in Mr. May's office at that time.

Q. Did Mr. Crafton say that you were to remain neutral in the event that two labor organizations started in a campaign for members among the employees of the V. E. & P. Company?

A. He didn't say anything about the foremen remaining neutral. He said for us not to influence our men working under us, one way or the other; to let them chose whichever way they seen fit to go.

Q. And by "influence" what did you understand?

A. What is that question?

Q. By influence, what did you understand? Maybe I did not make that clear. Mr. Crafton said you were not to influence the men.

A. That is right.

Q. What did you understand by his use of the word "influence"?

A. Well, that was—I taken it for granted that he meant that we were not to ask our men to join any organization or have anything to do with their organization. Whatever they wanted to form, whatever they wanted to join, it was perfectly all right with the foremen, as far as they were concerned.

Q. And by that would you include, if the men asked your

3030 personal, private opinion, as to labor organizations?

A. Well, my personal opinion, if a man would ask me, I would tell him to choose his way, to take anything he wished. You have three or four different things, probably, you can join, as far as I know.

Q. Now, did you know that they had three or four different things they could join around that time?

A. Well, I heard of the I. B. E. W., the C. I. O., and the I. O. E.

Q. Well, you did not hear of those around May 5th, did you; that is, the I. O. E.?

A. No, sir; I had not heard of that around that time.

Q. Well, had you heard of the T. W. U., which is the Trans-port Workers Union?

A. No, sir.

Q. Never heard of that?

A. I don't know anything about it.

Q. Then, really, the only one you heard of was the I. B. E. W.?

A. I didn't hear very little of that. I don't recall any time when I heard anything special about that.

Q. Do you recall receiving any information as to the I. B. E. W. organizing around May 5, 1937?

A. Haven't receive any.

Q. Go ahead and finish your answer.

3031 A. I say I haven't received any information about them whatsoever.

Q. How did you know that the I. B. E. W. was organizing or active around May 5, 1937?

A. I didn't know whether they were active or not. I do know that the I. B. E. W. has a place here in Norfolk. I don't know where it is. It is known as Local 80, or something.

Q. Is it not a fact that the I. B. E. W. had three or four locals in Norfolk for a number of years?

A. That I couldn't say.

Q. Had you heard of those locals?

A. No, sir; I hadn't heard of those locals.

3043 Q. Now, on this day, were you given any reasons by Mr. May as to why you should bring your crew in early?

A. No, sir; I was not.

Q. Do you have any idea why the crew was being brought in early that day?

A. I thought it was going to be another sales campaign or something, to tell you the truth.

Q. How were you notified to bring your crew in on that day?

A. Do you mean the day——

Q. Yes; May 24th.

3044 A. Mr. May notified the foremen that morning in his office.

Q. In the morning?

A. Yes; in the morning.

Q. Did you ask why you were to bring your crew in early?

A. No, sir; I wasn't asking any questions.

Q. He gave you no indication as to what was going to occur that evening, did he?

A. No, sir; he did not.

Q. And now, after you brought your crew in, you brought them into Cove Street, did you not?

A. That is right.

Q. And did any of the men not want to come in early that evening?

A. No, sir; I think they were all glad to come in a little early.

Q. Of course, the men are paid for riding time, are they not?

A. That is right; yes, sir.

3045 Q. Now, did you learn what had occurred at the Cove Street garage on this day?

A. Well, I did, the next day, I think. Of course, you could hear it talked around that the men had elected some representative, or something to go up before the company officials or the I. B. E. W. officials, or some kind of——

Q. You know it was not any I. B. E. W. officials, don't you?

A. To tell you the truth, I don't know what they done, but I know that they did elect Mr. Brown. I believe I heard his name mentioned by some of the men in my gang the next day. He was elected to go up to the main office, to some kind of a meeting or something.

3046 Q. And how did you learn that, now, Mr. Abernathy?

A. Just by hearing the men in the gang in the crew talking the next day.

3048 Q. And you yourself, of course, did not make any effort to find out what happened at the meeting of May the 24th, when Mr. Throckmorton made his speech, did you?

A. No, sir; I did not try to find out.

Q. And you did not make any effort to find out how the men in your crew had selected a representative, this Mr. Brown, to attend that meeting, did you?

A. Absolutely not; no, sir.

Q. Did you ever hear any of the men say that it would be a good idea to form a labor organization among the employees of the V. E. P.?

A. No, sir; not to my knowledge, I have not.

Q. Did any of the men ever ask you your opinion as to forming a labor organization?

A. I can't say that they have.

3068 Examination by Trial Examiner FORT:

Q. How do you fix the time as May 5th when you were first instructed?

A. I fixed it by the meeting that the men had the day before, on the fourth.

Q. That is the way you fix it?

A. Yes, sir. That is when we got those instructions.

Q. If the meeting was on May 24th, your instructions came on May 25th?

A. Yes.

Q. As a matter of fact, that is when the meeting was.

A. Did I say May 5th?

Q. Yes; several times.

A. I would like to correct that.

Q. I was just curious to see how you got your instruc-
3069 tions then, when the other foremen did not get them until some three weeks later.

Q. Tell me just what were the instructions that you received.

A. The instructions I received, Mr. Examiner, and the rest of the foremen—I can't say that all of the foremen were there that morning. That was when Mr. Crafton came into Mr. May's office.

Q. Tell me the sense of it, not the exact words.

A. He told us that the meeting was in regard to the Wagner Labor Act, and he said, "I want you foremen to not have one thing in the world to do with the men." He said, "Let the men go the way they choose to go. Don't try to influence the men working under you one way or the other. They are at perfect liberty to join anything they see fit. Don't influence them one way or the other.

3073 Redirect examination by Mr. MOORE:

Q. Was there anything said to you by Mr. Crafton or Mr. Winn or any of your general foremen or anybody else in authority over them suggesting to you that you report to anyone in authority in the company what may have come to your attention about the men talking union or creating any activity in regard to unions?

A. No, sir. I have never been requested to report anything.

Q. Did you ever try to find out anything about what they were doing or proposing?

A. Absolutely not, because it was immaterial to me what the men believed or what they joined. It was certainly none of my business, and I didn't care to join any of them, so I didn't. And, so far as the men were concerned, I don't know what they joined.

3076 *Stipulation*

Mr. MOORE. May it please the Examiner, I have just one more thing to do before we close for the day. I have obtained from P. R. Williams, who has been referred to in the evidence as Comptroller of the Power Company, a memorandum covering the participation that he had as representing the management in those negotiations of July 30th, 31st, and August 1st in the negotiating of the I. O. E. Contract of August 5th, insofar as that fourth section of the contract is concerned, relating to accounting and sale.

Just to save the bother of asking him to come all of the way over here from Richmond to put this in, it is stipulated between Mr. Hilton and myself that this may be introduced in evidence as an exhibit under similar conditions to the other three memoranda, and with the statement that it is agreed that Mr. P. R. Williams would testify that he prepared this memorandum and that it is correct to the best of his knowledge and belief.

3077 Trial Examiner FORT. And you do not care to cross-examine him, do you, Mr. Hilton?

Mr. HILTON. No, Mr. Examiner. And I have no objection to its receipt.

Trial Examiner FORT. Then, it will be received in evidence as Respondent's exhibit No. 42.

(The document above referred to was received in evidence and marked "Respondent's exhibit No. 42.")

3084 AUGUSTUS B. CARPENTER, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MILLER:

Q. Will you please state your name?

A. Augustus B. Carpenter.

Q. And your age?

A. I am 55 years old.

Q. And your residence?

A. I live in the Westhaven part of Portsmouth.

Q. And your occupation?

A. I am foreman of the tree surgeons.

Q. You are foreman of the tree surgery gang of the Virginia Electric and Power Company, are you not?

A. Yes, sir.

3085 Q. Mr. Carpenter, yesterday afternoon you heard the testimony of Mr. Abernathy?

A. Yes, sir.

Q. And some of the other foremen?

A. Yes, sir.

Q. About bringing in the men on May 24th a half hour ahead of time?

A. Yes.

Q. And not having done it again?

A. Yes.

Q. Does that accord with your recollection?

A. That is right. I did that day but not since and not before.

Q. You also heard, did you not, their statements as to instructions they received after the men's right to form or join any kind of a union and that the foremen must not interfere with or attempt to influence them in any way?

A. Yes, sir; I heard that.

Q. Is that correct?

A. That is correct.

Q. Did you at any time attempt to influence or advise any of your men about any union affiliation?

A. No, sir; I did not.

Q. Did you know of or hear of any attempt by any of the other foremen or any supervisory official of the company?

3086 A. No, sir.

Q. Mr. Fowler testified that you told him that the company had requested you to get some information about the I. B. E. W. Did that or did that not occur?

A. That is the most ridiculous thing I ever heard tell of.

Q. Did you at any time have any conversation with Mr. Fowler about the I. B. E. W.?

A. Yes, sir.

Q. What was that, Mr. Carpenter, and when was it?

A. I don't know the date. I didn't think any more about it, but it was some time after this I. O. E., or whatever it is, was organized, and we were talking about the I. B. E. W. and I told him that someone had already approached me to join but I didn't see my way clear.

Q. You mean to join the I. B. E. W.?

A. Yes; I mean to join the I. B. E. W. But I didn't see my way clear at that time, and there wouldn't be much use to talk to me because I knew what it was, that I had belonged to it, and if I ever saw my way clear to join I would put in my application.

3087 The first man who asked me I don't know who he was. I have been trying to think of it but I can't remember who it was that asked me. He tried to act a little secret about it.

I told Mr. Fowler I didn't see any use in being secret, because even if the company did object, which I didn't think they did, that they couldn't help themselves, and, more than that, we couldn't put one over on them if we tried to.

Q. Did you ask him for any information at all about the I. B. E. W.?

A. No, sir.

Q. Did you at any time say that you had been requested by anybody connected with the company to get any information?

A. I certainly did not.

Q. At any time did anybody connected with the Virginia Electric and Power Company ask you to try to get any information about the I. B. E. W.?

A. No, sir.

Q. Was it or was it not your definite understanding that the company was not interested in and would not interfere in any way with any union affiliation of the men?

A. I felt quite sure of that.

Q. You were so instructed, were you not?

A. Yes. And I had belonged to it once when I worked for the company.

Q. Did the company know it at that time?

A. Yes, sir.

3090 Cross-examination by Mr. HILTON:

Q. Had you been a member of the I. B. E. W. at any time before you were requested to join in May of 1937?

A. Yes, sir.

Q. When was it you were a member of the I. B. E. W. before that time?

A. I joined sometime in January 1919.

Q. In 1919?

A. Yes.

Q. Were you employed by the Virginia Electric and Power Company at that time?

A. I was employed by the Virginia Electric and Power Company in Richmond when I joined.

Q. Were you active in the organization when you became a member?

A. Yes. I attended the meetings.

Q. I didn't understand your answer.

A. I attended meetings.

Q. You did not hold any office, did you?

A. No.

3093 Q. Now, why did you get out of the I. B. E. W.?

A. I got out of it—I was out of work for a long time. I got behind on the house rent and grocery bill, and I had to eat and have a place to sleep, and when I got a check I paid them up first, and I was so far behind with the I. B. E. W. dues I didn't pay them.

Q. Now, were you at any time requested to get any information for any of the officials of the company in connection with labor organization activities?

A. I was not.

Q. And did you yourself ever volunteer any information in that connection?

A. I did not.

Q. When was the first time that you learned of the I. O. E.?

A. I didn't know what the name of the organization was for a long time. I don't know—but I knew it the next day after May 24th. I guess May 25th it would be, that they were fixing to organize.

Q. Did you receive any instructions on May 25th in regard to your attitude in the event that any union organization started among the employees?

A. I received instructions to have hands off and not have anything to do with it, either way.

Q. How were those instructions given to you—individually or as a group?

3094 A. There was a group of us in Mr. May's office, and Mr. Crafton gave us the instructions.

Q. Were the instructions plain and definite, as far as you were concerned?

A. Plain enough for me to understand them.

Q. Did you ask any questions in regard to the instructions that were given to you on that occasion?

A. No, sir; I didn't need to.

Q. Did any of the other foremen ask any questions in regard to the instructions that were given to you then?

A. I didn't hear of any.

Q. Just generally, what were those instructions?

A. Well, they said the men had a right to organize, to belong to any union they wished, and we were not to interfere in any way.

3095 Q. How about instructions with respect to organizing on company time?

A. I never heard anything about it.

Q. Or on company property?

A. I never heard anything about it.

Q. Well, did you know whether or not you could permit employees working under you to organize on company time?

A. I didn't know it at that time.

Q. Or on company property?

A. I didn't know it at the time.

Q. Well, did you later learn that the employees should not do those things?

A. I heard it later on.

3096 Q. How did you learn it later on?

A. Well, I noticed one meeting they held out in the open, off the company's property, and I inquired why from some of the other foremen, and they said they were not allowed to meet on the company property.

Q. Whom did you ask?

A. I don't remember—some of the other foremen. I don't know who it was.

Q. Well, then, the instructions that were given to you on May 25th were not clear and definite in your mind; were they?

A. Sure they were.

Q. They were?

A. Yes.

Q. And did you, at the meeting of May 25th, when you received these instructions, ask if the men could organize on company time?

A. There was nothing said about that.

Q. Well, did you ask that question?

A. No.

Q. Was that discussed at all?

A. I didn't know what they were going to do until after it was about all over with.

Q. And did you ever see any employee trying to organize the other employees on company time?

A. No, sir.

3097 Q. Or on company property?

A. No, sir.

Q. Did you ever receive any complaints that any of the men working under you were violating those instructions?

A. No, sir.

Q. When those instructions were given to you, were you advised that if you violated those instructions there would be some disciplinary action or punishment taken against you for violating those instructions?

A. Well, that was not spoken of in the way of punishment, because that is very seldom done. When they give orders, we usually obey them without any threat or punishment, because we know we will get it if we don't.

3099 Q. Did you ever discuss labor unions or organizations with any of the men before May 24th, 1937?

A. I never have discussed it; no, sir.

Q. Have you at any time since you have been a foreman discussed unions with any of the men working under you?

A. I have never discussed it. I told them that I belonged to one. I told them several times.

Q. Did you tell them that you got out of the union?

A. Yes, sir.

Q. Did you tell them why?

A. I may and I may not. I don't know. I didn't think that was exactly necessary.

Q. What was the occasion of your telling these men that you were a member of a labor organization; that is, the I. B. E. W., and got out of that organization?

A. Well, I had a right to tell them, if I wanted to.

3100 Q. You believed that you had a right to tell them that?

A. I did—not since—I haven't said a word about it since the Wagner Act went into effect.

Q. When was it you told these men about your affiliations?

A. Well, I think it is several years ago.

Q. I will ask you this: Was it after July 5, 1935, that you told them?

A. I can't remember any dates.

Q. Well, was it before that time?

A. I said I couldn't remember.

Q. You cannot remember?

A. Just what date; no.

Q. Had you received any instructions from any of your supervisors in regard to your attitude towards union when you were discussing the union with the men working under you?

A. No, sir; I never discussed it.

Q. Well, you talked to them about it, did you not?

A. I said I belonged to it.

Q. Well, you told them that, did you not?

A. Yes, sir; I told them.

Q. Around March 1937 you read in the papers; that is, the local papers; a lot about strikes and violence, and so forth, in connection with unions.

A. Yes, sir; I read right much about it.

Q. And did you ever discuss strikes and violence, and so

3101 forth, with any of the men working under you at that time?

A. No, sir.

Q. Did any of the men ask you for your advice in connection with unions around that time?

A. No, sir.

Q. And, of course, you were opposed to any strikes or violence, were you not?

A. I was opposed to an unjust strike. I wouldn't be opposed to a strike that was just.

Q. What do you mean by a "just" strike?

A. I would be opposed to violence.

The WITNESS. A just strike—where the men were not treated right by some company they would have a right to strike.

3116 Cross-examination by Mr. WHITE:

Q. Mr. Carpenter, you testified that you do not recall any instructions as to prohibiting the men from soliciting membership in a labor organization during working hours, I believe. Did you testify that you had no such instructions?

A. I don't think I did. I don't think I testified to that, but I did not have any instructions.

Q. I think you were asked if you were permitted to do it during working hours?

A. No.

Q. It was not done during working hours?

A. It was not done in my gang, I know.

Q. At any time?

A. No.

3145 GEORGE E. WINN, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MILLER:

Q. Will you please state your name?

A. George E. Winn.

Q. And your age?

A. 63.

Q. And your residence?

A. 2304 Canton Street, Norfolk.

Q. And your occupation?

A. General foreman.

Q. Of the Virginia Electric and Power Company?

A. Yes, sir.

3147 Q. Now, Mr. Winn, as general foreman, you are in charge of what part of the work?

A. In charge of light and power on the Portsmouth side of the river, and the railway department in Norfolk; that is, the line department.

Q. And Mr. May is the general foreman?

A. Of the light and power.

Q. Of the Norfolk territory, as we call it?

A. That is right.

3148 Q. Do you recall having your men brought in on May 24, 1937, at 4 o'clock p. m.?

A. Yes.

Q. That was a half an hour before the usual quitting time?

A. That is right.

Q. Were your men ever again brought in for any meetings before the usual quitting time?

A. No, sir.

Q. You do not know, do you, what occurred at the meeting that the men attended up in the garage on the afternoon of May 24th?

A. I do not.

Q. Now, you heard the testimony given here yesterday afternoon about the men assembling in Mr. May's office and being instructed the following morning as to the attitude of the company and what the attitude of the foremen must be as to any union activities?

A. I heard of it; yes, sir.

Q. What were those instructions, Mr. Winn?

A. I wasn't in that office.

Q. You were not?

A. No, sir.

Q. You did not hear about that afterwards?

A. Mr. Crafton instructed me in my office that same morning.

Q. And what were the instructions given you?

3149 A. That he wanted me to notify my foremen, all of them, not to have anything absolutely whatever to do with the men in regard to these organizations, that they had a perfect right to join any organization they saw fit. That was my instruction.

Q. And that you and your men had no right to interfere?

A. My foremen; yes.

Q. Your foremen?

A. And I gave them that instruction.

Q. Now, did you know or hear of any violations of those instructions, Mr. Winn?

A. I did not.

Q. So far as you know, they were carried out?

A. So far as I know.

3158 Cross-examination by Mr. SPENCER:

Q. Now, Mr. Heath and Mr. Westcott stated that you called these men in to sign an application card for the I. O. E. You say that is not true.

A. No, sir; it is not true.

Q. Do you recall when you did talk to Mr. Heath and Mr. Westcott?

A. Yes. They came into the office and asked those questions and I told them about the bulletin being out there, and that I would like for him to go ahead and sign it, that I didn't want to see them lose their jobs, maybe, or something of that kind. I don't remember the words I repeated to them.

Q. Do you recall about the date that this took place?

A. I have an idea it was along about the last of August.

Q. The latter part of August?

A. Yes, sir; as well as I can remember.

Q. In any event, you would not say it was later than the 15th of September?

A. No; I think it was around the latter part of August, as well as I can remember. I don't remember the date.

3159 Q. What was, in effect, the wording of this bulletin that was on the bulletin board?

A. What effect did it have?

Q. In effect, what was the wording?

Trial Examiner FORT. What did it say?

The WITNESS. The only thing I said to those boys about the bulletin was that it was signed and put up by Mr. Holtzclaw, president, that the men had been organized, and they asked for a closed shop, and all the men would have to join the I. O. E. to work with the company. That is to the best of my memory.

Q. You never did see but one bulletin on the board in regard to that; did you?

3160 A. I don't remember. I don't think so.

Q. Just one bulletin.

A. At that time; yes.

Q. I am now showing you a copy of the bulletin which we have had marked for identification as Board's Exhibit No. 41, dated October 28, 1937, and signed by Mr. Holtzclaw.

Q. Is that the bulletin that you saw on the board [handing the document to the witness]?

3161 A. This is the bulletin that I have reference to, sir.

(The document previously marked "Board's Exhibit No. 41" for identification was received in evidence.)

3171 THEODORE F. MAY, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MILLER:

Q. State your full name, age, residence, and occupation.

A. Theodore F. May; 53; Chesapeake Beach, Virginia.

Q. You are general foreman of the Virginia Electric & Power Company, are you not?

A. That is right.

Q. And you are in charge of the distribution work in what is called the Norfolk district of the electric department?

A. Yes, sir.

3173 Q. Now, Mr. May, will you give a description of your duties as general foreman?

A. Well, I direct the men and lay out the jobs; I lay out their work for them, and I follow up to see that it is done.

Q. Who designates the men to go into the different gangs or work under the different foremen?

A. I do.

Q. In this company has it ever been the policy that the individual foremen can select the men they want to work for them?

A. No; that is not customary among the foremen.

Q. Has it ever been the policy that the men can select the foreman they want to work for?

A. No. They make the requests sometimes, but in very few cases.

Q. But the general foreman is the final authority on that, as I understand you. Is that correct?

A. That is correct.

Q. Do you have to rely entirely upon reports of the individual foremen as to the ability and capability and reliability of the linemen and linemen forces?

A. I do not.

Q. How do you get that information?

A. I am with the men off and on during the day and I see practically everything that goes on.

3174 Q. You have to travel around?

A. That is right.

Q. And see what the different gangs are doing?

A. I visit the gangs during the day. Sometimes twice a day.

Q. So you know as much about the ability of your men as your foremen do?

A. I feel that I do.

Q. On May 24, 1937, did you receive instructions to have the men brought in ahead of time?

A. Yes, sir.

Q. Who instructed you to do that?

A. Mr. Crafton.

Q. What time did he ask you to bring them in?

A. To have them in at four o'clock.

Q. That afternoon?

A. Yes, sir.

Q. Did you or did you not issue orders to the individual foremen to do that?

A. I issued the orders to the group of foremen in my office.

Q. And that was a half hour before quitting time?

A. That is correct.

Q. Mr. May, were the men ever afterwards brought in ahead of the usual quitting time for a meeting?

A. No, sir.

Q. Of course, you don't know what happened at that
3175 meeting over the garage, do you?

A. No, sir.

Q. Did Mr. Crafton explain to you the purpose of bringing the men in ahead of time?

A. He stated to me that Mr. Holik wanted to explain to the men their privileges about the Wagner Act.

Q. Did he say anything about a meeting that was to be held that night at the main office?

A. No, sir.

Q. He did not tell you about that?

A. No, sir.

Q. A number of the witnesses here have testified, Mr. May, in respect to different matters concerning you. Mr. Fowler testified that he told two of his men or two of the men from his gang, they being named Davis and McClausland, and that you gave him as the reason at the time that you thought the men were getting out of hand. Did you give any such reason as that to Mr. Fowler? I mean that Fowler's men were getting out of hand. Did you make any such statement to him?

A. No; I didn't make any such statement to Mr. Fowler as that.

3187 Q. You said nothing to anybody trying to throw a scare into the men, you say?

A. No; the only thing that I told Judge was that the men were quite upset about the lay-off because information had gotten back to me that somebody stated that there would be another lay-off. Naturally, the men would be upset over anything like that.

3193 Q. Mr. May, I seem to remember that I asked you if you had the men brought in a half hour ahead of time on the afternoon of May 24th?

A. Yes, sir; you asked me that.

Q. And you said that you had.

A. Yes, sir.

Q. I do not recall having asked you whether or not, at any subsequent time, the men were brought in before the usual quitting time for any meeting. Was that done?

A. No, sir.

Q. I do not recall that I asked you about a meeting on the morning of the 25th, when Mr. Crafton made some statement to you and the foremen. Do you recall that meeting?

A. The morning after?

Q. Yes.

3194 A. Yes, sir.

Q. The foremen were present; were they?

A. Yes, sir.

Q. What instructions did Mr. Crafton give?

A. Mr. Crafton notified the men why they were brought in. Mr. Holik had explained to him the evening before the Wagner Act, and we were not permitted to attend the meetings, and that we should not interfere with them in any way in their organization, or advise them in any union activity.

Q. Did he inform you and the foremen that the men could or could not, as they saw fit, join or form any kind of an organization they desired?

A. Yes; he stated that.

Q. And that the company's attitude was that it would not interfere?

A. Yes.

Q. And that you and your foremen must not interfere?

A. All of us that he was talking to—myself and the foremen.

Q. Must not interfere?

A. Must not interfere.

Q. Or advise the men?

A. That is right.

3202 Q. Now, Mr. Harrell testified that on one morning you came to the platform and told foreman Wallace that you had to make another transfer off of Fowler's truck, and asked him if he could give you a man. He also testified that foreman Wallace asked what kind of man you wanted, and that you replied you wanted a man who could go up and down a pole and also put out anchors. He also testified that foreman Wallace said he hated like the devil to give you a man, and he testified further that you made the statement to him that you were going to break up that union agitation if you had to fire every man at Cove Street.

State whether or not that is a true statement.

A. I made no such statement.

Q. Did you speak to Mr. Wallace about taking a man off his truck?

A. I recall asking Wallace about a man, and, for some reason, I changed my mind, and left it as it was, and told him that I would get somebody else.

Q. Did you say anything to him about Mr. Fow'er in that connection?

A. No, sir.

Q. Did you say anything about breaking up union agitation if you had to fire everybody at Cove Street?

A. I did not.

3203 Q. Now, Mr. Harrell also testified that he had an argument with a man named Haskins and a man named Ward, called "Red" Ward, for about a half hour in an office adjoining yours, and that it was in your hearing. Did you hear any such argument?

A. I did not.

Q. Would you or not permit the men to fuss with each other on the company's premises?

A. No; if I had heard it, I would have called their attention to it.

Q. Now, Mr. Harrell also testified that he told you, about two days before the Blair Junior High School meeting, that he had joined the I. B. E. W. What about that?

A. No; I do not recall anything like that.

Q. Would it have made any difference to you or not?

A. Not a bit in the world.

Q. Did Mr. Harrell ever make any inquiry of you for advice as to union affiliation?

A. He did.

Q. Where was that?

A. At my home.

Q. About when?

A. I can't recall the date.

Q. When did you tell him?

A. Probably in June 1937.

3204 Q. What did you tell him, Mr. May, if anything?

A. I told Harrell that he was big enough and old enough to make his own decision.

Q. Would you say that you then refused to give him any advice on that occasion?

A. I could not do it.

Q. Now, what did Mr. Harrell say after that? What occurred at that time.

A. I believe Harrell told me that if he joined the I. B. E. W., why, he could go anywhere and demand wages. And that was about the end of the conversation.

Q. You did not reply to that?

A. No, sir.

Q. Now, Mr. Harrell also testified that the morning after he was in an argument with Ward, whom we call "Red," and Haskins that you ordered his transfer to Mr. Tomlinson. You said you did not know anything about that argument.

A. No.

Q. Did you or not make a transfer at some time of Harrell to Mr. Tomlinson?

A. Yes; I did. I transferred the boy several times. I can't recall the dates.

Q. Did union agitation or affiliation have anything to do with that transfer?

A. No, sir.

3205 Q. Or any other transfer made by you?

A. No, sir.

3207 Q. Mr. Harrell testified that prior to your recommending him to Mr. Crafton he told you about trouble he had with employees at the Ford plant. What about that?

A. Some time after Harrell was employed——

Q. And make it brief, please, Mr. May.

A. I will be as brief as I can. I will have to state

3208 this: Quite frequently Harrell rode to and from work with me to Chesapeake Beach, and I would say it was two or three months afterward that he brought up this Ford plant proposition. That if he stayed over there he would have to murder somebody. He could not get along with them.

By Mr. MOORE:

Q. That is after he was first employed?

A. Yes, sir; two or three months afterward. That was my first knowing that he was hot-headed.

By Mr. MILLER:

Q. And that information came from him?

A. Yes, sir.

3209 Q. Mr. Harrell also testified that, having been informed by Mr. Tomlinson that he was put under the hammer, he came to your house and inquired from you about it, and that you made no definite reply, and that he said somebody was lying, and the only way to settle the matter was to get you and Mr. Tomlinson and himself together to decide who was lying, whether or not that occurred.

A. That is the time that I just made a statement two minutes ago about he wanted to get transferred out of Tomlinson's gang. That is the time I told him he would have to do whatever the foreman required.

Q. Did he tell you that either you or Tomlinson was lying?

A. No, sir. I don't think he would do that in my home.

Q. How about elsewhere?

3210 A. It happened to be in my home at the time. Well, I don't believe he would do it anywhere else. He is a bad boy, but I don't believe he would do that.

3212 Q. Do you recall, Mr. May, the report of the altercation between Mr. Harrell and Mr. Davenport?

A. Yes.

Q. Who first reported that to you?

A. Mr. Davenport.

Q. They were in Mr. Tomlinson's gang at that time, were they not?

A. No.

Q. I mean in Mr. Wallace's gang?

A. Yes.

3213 Q. Did you talk to Mr. Wallace about it?

A. Mr. Wallace came in at the time Mr. Davenport was in the office.

Q. What discussion occurred there at that time?

A. Between me and them?

Q. Between you and Mr. Wallace. I don't care about Davenport.

A. I told Mr. Wallace that it didn't seem like the boy could get along with anyone.

Q. You were talking about whom then?

A. I was then talking about Harrell. He had had trouble before several times, and I said to give Harrell a digging set and let him get off to himself and maybe he would come to himself and be a better boy.

Q. Was that as a matter of punishment or not, Mr. May?

A. It was in a way.

3215 Q. Now, Mr. May, in 1936 what happened in connection with the construction work of the company, that is, new work?

A. We had considerable new work in 1936. We had line extensions both in Virginia and in North Carolina.

Q. Did you or did you not employ additional men at that time?

A. We did.

Q. Did you put additional gangs to work?

A. Yes, sir.

Q. How did that work run in 1937?

A. It ran out along about the spring or summer of 1937.

Q. What was done to keep your forces intact?

A. We had a lot of maintenance work right at that time that needed to be done.

Q. Did that include extensive replacement in long lines?

A. Yes, sir.

Q. In the early part of 1938, let us say, what class of work were the line forces doing at that time, as between new construction and maintenance work?

A. It was practically all maintenance work, replacing poles.

Q. When did you first realize or think, Mr. May, that
3216 it would be necessary to reduce the company's forces in your department?

A. Along about December of 1937 things began to fall off considerably. I couldn't see any new work ahead of us.

Q. Usually if there is any new work coming up, it comes along about in the spring, doesn't it?

A. Yes, sir.

Q. Did it pick up in the spring of 1938?

A. No, sir.

Q. When were you informed that it had been definitely decided to reduce the forces?

A. I cannot recall the dates on that. It was the latter part of February or March. It was probably in March.

Q. The latter part of February or in March?

A. Yes, sir.

Q. Did you receive any instructions in connection with that?

A. Well, I was told there was going to be a lay-off, that the maintenance work had just about petered out and there was no new work going up, which it has not up to the present time, outside of one little job at Kitty Hawk, North Carolina.

Q. Were you given any duty in connection with that or were you called into conference with anybody as to who should be laid off?

A. Yes; I was called up into Mr. Holik's office and Mr. Crafton's.

3217 Q. What instructions did Mr. Holik give you as to the lay-off and how it was to be made?

A. He told me the percentage they expected to cut and about the number of first-class and second-class men we would have to cut to make the percentage.

Q. You mean Mr. Holik told you you had to divide your lay-off between the different classes of men?

A. That is right.

3218 Q. Was there a decision made at that time or did you and Mr. Crafton go and make up your recommendations and then bring them back to Mr. Holik?

A. No, sir. The decision was not made at that time. It was probably two or three weeks later.

Q. In the meantime what happened between you and Mr. Crafton, Mr. May?

A. Well, it was given considerable study from time to time.

Q. And discussed between you and Mr. Crafton?

A. That is right.

Q. Was it necessary for you to ask the individual foremen about their men, Mr. May?

A. I didn't do it?

Q. Why didn't you?

A. Well, I thought I was familiar with the men.

Q. By reason of your supervision of them?

A. That is right.

3221 Q. Why was T. N. Harrell, Jr., selected to be laid off as one of the third-class linemen?

. One reason was because Mr. Harrell had had so much trouble with our men and ' didn't seem to get along with them. The other reason was that he was told when he came with the company that it was temporary work and, naturally, when

3222 the work gave out we had to get rid of him.

Q. Mr. May, if you will notice this Respondent's Exhibit No. 22 you will see that all of these third-class linemen came with the company in 1936, did they not?

A. Yes. That is the time when we laid them off.

Q. There were one or two who had come into the service after Mr. Harrell did, were there not?

A. Yes, sir. There were two or three of them.

Q. Why were they not selected to go instead of Mr. Harrell?

A. Well, the men seemed to take a little more interest in their work and they advanced much faster than Harrell had advanced, and they had become more competent in their work.

Q. Take the other men who were junior to him in point of entering the service of the company; do you know whether or not he had started to learn climbing before they did or did they start before he did?

A. No; quite a number of those boys had taken up climbing before he had gotten his tools.

Q. So, Mr. May, considered from the standpoint of advancement and value to the company and his disposition toward the men in the service of the company, did you or did you not consider that he was one of those who should go?

A. Absolutely.

Q. Was that decision made, so far as you were concerned,

3223 in the exercise of your very best judgment?

A. Between the three of us.

Q. How about your judgment? Was it your honest judgment?

A. That was my honest judgment; yes.

Q. I will ask you if the matter was coming up anew today would your decision be the same now as it was then?

A. It would be the same; absolutely.

Q. Now, Mr. May, I want to ask you whether in connection with the decision in connection with this lay-off there was taken into consideration in any way any union affiliations or union activity of any men?

A. No, sir.

3224 Cross-examination by Mr. WHITE:

Q. Mr. May, Mr. Harrell testified on page 1341 of the record as to an interview that he had with you shortly before he was laid off by the company. He stated that he had called you in on account of the trouble that you had been having with him, and then he described a conversation as follows—here the quote begins:

"He"—meaning you—"said, 'you have been in trouble with the men on the outside,' and I naturally knew that I had not, except in the company-union meeting, and I kept hammering at him and asking him just who he meant and what time, and he finally told me that it happened in the I. O. E. Hall, and that if I thought that stuff didn't get back to the management, it did."

Q. Do you remember making any statement like that to
3225 Mr. Harrell?

A. No, sir.

Q. "You also stated"—and I am quoting again: "You also stated, 'if I couldn't fall in line with the men in the Virginia Electric & Power Company'—he didn't say the I. O. E., however—'I might just as well look for another job.'"

Do you remember having a conversation of that kind with Mr. Harrell?

A. I made no statement to that effect. I might state this, that I did tell Mr. Harrell that if he didn't mend his ways—this was the run-in he had with——

Q. Davenport?

A. Davenport. I told him if he couldn't get along with those fellows he would just as well look for another job. There was nothing mentioned about his unionism or activities.

Q. As a matter of fact, Mr. May, do you receive information as to what takes place in the I. O. E. meetings?

A. No, sir.

Q. Have you ever interested yourself to try to find out what takes place in the I. O. E. meetings?

A. I have not.

Q. And you never made any such statement, as I understand it, to Mr. Harrell?

A. No, sir.

3233 By Mr. Spencer:

Q. During your entire employment with the company, have you ever had a request from your superiors to instruct the foremen to bring all of the men in during working hours for the purpose of attending a meeting?

A. I have.

Q. When was that?

A. Oh, on several occasions. I cannot recall the dates. It has always been the custom to bring the men in half an hour early to listen to some sales campaign or some safety talk that the safety director might want to explain to the men.

3234 That happened quite often—probably two or three times a year.

Q. Who gave you the instructions to have the men brought in at 4 o'clock on May 24th?

A. Mr. Crafton.

Q. Did you ask Mr. Crafton what the purpose of this meeting was going to be?

A. I did not.

Q. Did Mr. Crafton tell you the purpose of the meeting?

A. He didn't explain it to me at that time.

Q. You made no effort to ascertain what was going to happen on the afternoon of May 24th?

A. No; we did not pay much attention to it, because that happened, as I say, two or three times a year.

Q. When did you learn that you were not going to be permitted to attend that meeting?

A. On the afternoon of May 24th.

Q. Under what circumstances did you learn that you could not attend the meeting?

A. Well, when the men assembled outside of the office there, before they went in to their meeting, Mr. Crafton, I think, notified the foremen as they came along, and I happened to be one that came along, and he said, "You all are not eligible to attend this meeting."

Q. Did you then inquire of Mr. Crafton what kind of a meeting they were going to have?

3235 A. He told us.

Q. What did he say?

A. He says Mr. Holik was going to explain to the men their rights—or he didn't use those words—he said he was going to explain the Wagner Labor Act to them and their rights and privileges, and what they could do, if they so desired.

Q. And being an employee of the company, did you or any of the foremen question Mr. Crafton about your rights and priv-

ileges to learn something about the National Labor Relations Act?

A. He explained that.

Q. What did he say?

A. No one in a supervisory capacity could attend—the men only.

Q. And did you ask him who had given him these instructions?

A. No, sir.

Q. But he told you there that you could not attend?

A. That is right.

Q. When did you learn what went on in this meeting of May 24th among the men?

A. I never did learn definitely just what it was.

Q. You never did learn?

A. No, sir.

3236 Q. Then, on May 25th, the following day, all the foremen were called in; is that correct?

A. Yes.

3238 Q. Where was it held?

A. It was held in my office.

Q. In your office?

A. The men were in there getting their instructions for the day's work. Mr. Crafton walked in there. There was about seven, probably eight foremen there.

Q. Now, was this a coincidence that the men were there or were they specifically called in to be present at that time?

A. No; they were not called in.

Q. They just happened to be there——

A. Pardon me.

Q. Go ahead.

A. I say they were assembled there to get their day's instructions.

Q. Were all the foremen working out of the Cove Street plant present in your office at that time?

A. I am not positive.

Q. Well, now, will you state just what Mr. Crafton told the men that were present?

A. He told the men that Mr. Holik had explained this Wagner Labor Act, and the men were free to do as they chose, and that no one in a supervisory capacity should have—or say anything to the men one way or the other—interfere with them in any way.

3239 Q. Did you think that there was anything peculiar in this remark by Mr. Crafton, since there was no union activity among the men?

A. It was. It seemed to be a little funny. We did not know just what it was all about.

Q. Didn't Mr. Crafton tell you that the men had a meeting the day before and that they had elected representatives to hear Mr. Holtzclaw and that they were forming a union and for the foremen to be "hands off," or words to that effect?

A. I can't say that he explained it that way.

Q. Well, how did he explain it? Just tell as nearly as possible the language that he used there.

A. I thought I explained that when I told you what Mr. Crafton told us at that meeting. I think I covered it all.

Q. Well, let us have it again. Didn't he tell you that the men were forming a union and that the foremen should not have anything to do with it and could not belong and could not attend the meetings?

A. He stated that the men—it had been explained to the men about the Wagner Act, and they were free to do as they pleased about joining a union. I don't know as he said anything about forming a union. And for the foremen not to use any influence in any way towards the men, towards advising the men in any way.

3262 Q. You had quite a lot of trouble with Mr. Harrell, had you not?

A. We had quite a few complaints of his being hot-headed and not getting along with the men.

Q. Did you ever hear of a man getting into trouble by himself?

A. No.

Q. On these occasions when you had complaints about Mr. Harrell did you ever feel that it was necessary to go down and dig up the facts concerning these cases and see who was at fault and who was not at fault, or did you just take the foreman's word for it?

A. I taken the foreman's word for it.

3263 Q. So you did not use the offices which you could have used in finding out whether Mr. Harrell should have been blamed at all for any of these squabbles that he might have gotten into?

A. The foreman's statement was all that was necessary.

Q. Did you ever ask Mr. Harrell or give him a chance to explain his position?

A. I gave him a chance to better himself—keep out of trouble.

Q. Did you ever give him a chance to explain his position?

A. No.

Q. Now, in Mr. Harrell's case you did not consider seniority?

A. No, sir.

Q. And in Mr. Harrell's case, there were a number of men who came to work after he did?

A. That is right.

Q. Is not that true?

A. Yes, sir.

Q. In Mr. Judge's case you did consider seniority, in that he was the youngest man in point of service as a second-class lineman?

A. Yes.

Q. Can you explain why in one case, you did consider seniority, seniority being the only reason for Mr. Judge's being dis-
3261 missed, and in Mr. Harrell's case you did not consider seniority?

A. We had trouble with Mr. Harrell. He couldn't get along with the men. That was the reason for his lay-off.

Q. Have you ever had any reports on any of the other men having trouble?

A. Not in the nature of his trouble.

Q. What was the nature of Mr. Harrell's trouble which would make him a person that you would disregard all other things and just discharge him for that reason?

A. He was a man that was fussing among the men all the time—keeping a general uproar and dissatisfaction.

Q. The foremen didn't like him?

A. Most of the foremen liked him.

Q. Most of the foremen liked him?

A. Yes.

Q. Did you ever have anyone to ask Mr. Harrell be permanently transferred to their trucks?

A. Yes.

Q. Did you transfer Mr Harrell?

A. I believe I did to the Tomlinson gang.

Q. Now, when Mr. Harrell was working for Mr. Fowler, did Mr. Fowler ask that Mr. Harrell be transferred from his truck?

A. No.

Q. Did Mr. Fowler at any time tell you that he could not handle Mr. Harrell; that he was hot-headed and causing
3265 trouble?

A. I don't believe I had any complaints from Mr. Fowler at all in regard to Harrell.

3266 Q. Now, what time of day was it that you, Mr. Holik, and Mr. Crafton got together to determine who of the men should be discharged, around the latter part of March?

A. Probably in the middle of the afternoon.

Q. In the middle of the afternoon?

A. Yes.

Q. Where did you meet?

A. In Mr. Holik's office.

Q. Did you get all the personnel records out and go over them?

3267 A. They were all gone over; yes.

Q. And after going over the records what conclusion did you come to as to Mr. Harrell?

A. As I stated a few moments ago, due to hot-headedness and failure to get along with the men in the gang.

3268 Q. I show you this list of second- and third-class linemen, which is in evidence as respondent's exhibit No. 22. Of the third-class linemen there are ten in number, and of the ten all were hired in the year 1936, and all of these men were promoted to third-class linemen on the same date, were they not?

A. Yes.

Q. So that Mr. Harrell, then, did progress as fast as those ten men, did he not?

A. After he was rated third class.

Q. Well, when was he rated third class?

A. At the same time that the others were. I don't know what date is on there.

Q. Before a man can be reclassified from a groundman to a lineman he has to have certain qualifications and be competent to do the work of a third-class linemen; does he not?

A. That is right.

Q. So he reached his qualifications as quickly as these other nine men on the same list with him; did he not?

A. Yes.

Q. Now, is not this the real fact as to why Mr. Harrell was discharged, that the work had run out?

A. That had something to do with it; yes.

Q. Well, is not that the only reason?

A. No.

3269 Q. If you had had plenty of work, would Mr. Harrell have been discharged?

A. Yes, sir.

Q. You had previously made up your mind to that?

A. Yes, sir.

Q. When did you make up your mind that you were going to discharge Mr. Harrell?

A. I can't recall.

Q. When?

A. I don't recall just when—probably after his last trouble.

Q. I want to know when you made up your mind that you were going to discharge Mr. Harrell.

A. As I stated, after his last trouble.

Q. Well, when was his last trouble?

A. I don't recall the date of that—some time in February.

Q. Some time in February?

A. Yes, sir.

Q. Whom was that trouble with?

A. Davenport.

Q. Did you ever ask Mr. Harrell to explain his side of the story?

A. He had a chance to. He did not.

Q. And what was the nature of that trouble, Mr. May?

3270 A. I don't know just how it originated now. I can't recall.

Q. And you do not know how it originated, and yet you made up your mind that you were going to fire him?

A. That is true.

3271 Q. Was it because Mr. Harrell had called Mr. Davenport a bastard, and it had been reported to you?

A. Yes.

Q. Do you know why, or did you find out why Mr. Harrell had called Mr. Davenport that?

A. Did I try to find out?

Q. Yes.

A. No; it was explained to me, but I can't recall the words now, but that was the——

Q. Did Davenport report that incident to you?

A. He and the foreman.

Q. Did not Davenport report it before the foreman?

A. He was in the office probably a couple of minutes before the foreman came in.

Q. Did Mr. Davenport ever report anything else to you?

A. No.

Q. But no action was taken about that from February 1st up until March 31st; was there?

A. No.

3274 Q. I show you a photostatic copy of the termination papers of Mr. Harrell, which have been marked for identification as Board's Exhibit No. 42——.

Q. It shows about the middle, "reason for separation—reduction in force due to completion of rural line construction." Now, is that the reason that Mr. Harrell was discharged on April 1, 1938?

A. That is one of the reasons.

Q. Well, is there any reason why the real reason should not be put on there?

A. I don't know. I can't answer that. I didn't get that letter out.

Mr. Spencer. If agreeable to counsel, I would like to offer that as a Board exhibit.

Mr. Moore. That is all right, sir. That is a copy,
3275 as I understand it, of the separation slip that was given Mr. Harrell in connection with his state unemployment payments.

Trial Examiner Fort. It will be accepted, if there is no objection.

(The document previously marked "Board's Exhibit No. 42" for identification was received in evidence.)

3281 By Mr. Spencer:

Q. Now, did Mr. Harrell discuss with you his being put under Foreman Tomlinson?

A. I think he did; yes.

3282 Q. Did he ask that you transfer him from Tomlinson's truck to another truck?

A. Yes.

Q. And, of course, as general foreman, you look after the desires of the men, you want to see that their working conditions are happy and harmonious, do you not?

A. We try to do the best we can for them.

Q. Did you offer to see if you could place Mr. Harrell on another truck?

A. Right at that time it was not convenient to do it.

Q. Did you ask any of the other foremen in the plant if they could use Mr. Harrell?

A. No; I did not.

Q. Well, were any of the other foremen doing similar work to that of Mr. Tomlinson?

A. Not right at that time; no.

Q. Well, what was the nature of the work that Mr. Tomlinson was doing at that time?

A. I believe we were doing work with the C. & P. Telephone Company.

Q. And that was changing lines, was it not?

A. Changing of the poles.

Q. Changing of the poles?

A. Yes.

Q. And out of the eight foremen that you had, none of
3283 the other foremen were doing any changing of poles, wiring of one pole to another?

A. They probably were doing heavy construction. This work for the telephone company was light work, and Tomlinson's was the only crew working with the telephone company.

Q. But you did not speak to any of the foremen and ask them whether or not they could use Mr. Harrell so that you could transfer him from Mr. Tomlinson's truck?

A. It was not necessary.

Q. Well, why wasn't it convenient?

A. Well, I felt this way: If a man could not work where I ordered him to work, I had no use for him.

Q. Now, you say Mr. Judge and Mr. Harrell were temporary employees.

A. They were notified to that effect when they were employed.

3295 Q. Have you heard the previous testimony in which a foreman said he had Harrell cutting 2,300 volts hot?

A. I believe I heard that statement; yes.

Q. You did hear that statement?

A. Yes.

Q. Is that considered good work, that you had to be very careful on?

A. I think he explained that.

Q. I didn't ask you what he explained. I asked you if it is considered good work?

A. Yes, sir; it is considered good work.

3308 By Mr. LATHAM:

Q. Did Harrell ever tell you he joined the I. B. E. W.?

A. I can't recall that he did.

Q. You cannot recall that he did?

A. That he told me that he did. He told me that he thought he would.

3310 Q. You said that you considered Harrell a "bad boy"; is that correct.

A. I meant it to be this way, that he couldn't get along with his fellow-men without fussing. He keeps the men worked up all the time.

3312-3313 Q. Is there any man at Cove Street who works in the electric department by the name of Gregory?

A. There is.

Q. What are his duties?

A. He is lineman on the service wagon.

Q. That is not under your supervision?

A. No, sir.

Q. What were his duties before he became a lineman on the service wagon?

A. He was ground man and helper on the line truck.

Q. Does he have charge of that service wagon?

A. No.

Q. Have you ever had occasion to have your attention called to the fact that the men signed a petition, asking that he be taken out of the gang he was working in?

A. Yes.

Q. And at the time he was removed by the petition of the men that he could not get along with, he was working as a ground man?

A. Yes.

3314 Q. Since that time he has been promoted to the position of lineman?

A. That is right.

Q. Is that the usual compensation for not being able to get along with your fellow employees?

A. No; that seemed to be an exceptional case.

3326 By Trial Examiner FORT:

Q. I understood you to say that in considering these charges you did not consider the man's union activity or lack of union activity.

A. No.

Q. How did you eliminate that from your mind? In making up your mind as to whether or not a man could be discharged, how could you cut that out; how could you forget about it?

A. Well, sir, we have been working these men for years and years. There is nothing comes into it of anything like that.

Q. You mean that it had no influence on your decision?

A. It had no bearing on the case at all.

3327 Q. Now, in the case of this man Harrell, when he had this difference with Davenport, what did the foreman tell you about that?

A. Well, he told me that Davenport and Harrell had gotten into this argument; he didn't know just how it started.

Q. He told you he did not know how it started?

A. He told me he didn't know exactly how it started. When he got there they were just about ready to go to blows. He said something to them and pacified them, or, I think, he stated he had taken one away to keep them from fighting.

Q. That agrees substantially with what the foreman said about it, as I recall.

A. Yes.

Q. What I was wondering about was whether you or the foreman made any inquiries as to whether or not Harrell was responsible for it.

A. Well, it seemed in every case that he was.

The WITNESS (Continuing). It seems in all cases that Harrell was the agitator—in these cases that they were having on the job.

By Trial Examiner FORT:

Q. How could you know that in this case if you did not investigate it and did nothing to find out?

3328 A. Because we never had any trouble in our gang until Harrell worked among the men.

3330 Q. Well, were there any other instances in which he was involved? What I have in mind is this: I am trying to ascertain how you were willing to direct that some punishment or severance from the normal work, whatever you call it, should be meted out to Harrell, without even inquiring into his side of the case. That is what I am trying to find out. I want to know just what background you had that caused you to do that.

A. Another difficulty we had was one of the boys in the garage. I think it was just about the time they were going to work, close to 8 o'clock. I don't remember——

By Mr. MOORE:

Q. What was that, do you remember?

A. That was where this boy knocked him down, I believe, in the garage.

By Trial Examiner FORT:

Q. The boy knocked Harrell down?

A. Yes.

Q. Did you think Harrell was entirely responsible for that?

A. That was just before the men went to work. I didn't inquire into that very much, but I understand from the boy that he called him a dirty name, and the boy hit him.

By Mr. MOORE:

Q. What is the name of that boy? Is it Turner?

A. Turner is the name; yes.

3331 Q. I understood that, but I also understood yesterday—I may be in error, but I understood you to say yesterday that whether or not a layoff had come, Harrell was going to be fired anyway.

A. Well, if I did, I meant it this way—because Harrell had been warned; I had warned Harrell previous to this. Well, on his last difficulty in the gang, I had had him in the office and warned him that if he couldn't get along with the men,

he had better look for another job, because we weren't going to take any more of it.

Q. Then, if I understand you right, you had made up your mind to fire him regardless of a layoff.

A. Well——

Q. I understood you to say that yesterday.

A. If he had any more difficulties with the men, I warned him that time that he went back to work.

3332 Q. I did not recall that you put any conditions on it yesterday when you stated that. I understood you to say that you had already made up your mind that he was going, anyway.

A. Well, I meant it that way—if he had any more difficulties with the men, he would be laid off.

Direct examination by Mr. Moore:

Q. I am interested in the question that the Examiner was just asking you about—as to your feeling about laying off or discharging Harrell. How long did he work before he was laid off after the time when you called him in and gave him what you considered that very definite warning; how many weeks, or was it a month or two, or how long was it?

3333 A. I can't recall, Mr. Moore, definitely. It was about ten or fifteen days before he was notified.

Q. It was ten or fifteen days before he was notified, that you had him in and cautioned him?

A. Yes, sir.

Q. After that caution, if this general layoff had not come up, and if he had not gotten into any more trouble with the men, would he have been let out? That is what I want to find out.

A. No, sir. No; he was instructed that morning that if he did have any more trouble, he would be laid off, and then we put him out to himself, trying to help the boy along and get him out of this bad humor he gets into, and help the boy along, and if he had made out all right and the layoff had not come up, he would have been working yet.

3340 Q. Well, at that time your opinion about Harrell was sufficient to cause you to recommend him to be discharged?

A. No.

3347 William T. Crafton, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Moore:

Q. Will you please state your name?

A. William T. Crafton.

Q. Mr. Crafton, in the organization set-up of the dis-
3348 tribution department of the Virginia Electric and Power Company on this Norfolk Division, how do you function in relationship to Mr. May, who has just testified, and Mr. Holik, who has been referred to in the evidence here as the superintendent of the Distribution Department?

A. Mr. Holik is superintendent of the Light and Power Department.

Q. Mr. Holik is superintendent of the Light and Power Department?

A. Yes. And I am superintendent of Distribution.

Q. You are superintendent of Distribution, you say?

A. Yes.

Q. And Mr. Holik is superintendent of the Light and Power Department?

A. Yes; Mr. Holik is superintendent of the Light and Power Department. I take my orders from Mr. Holik.

By Trial Examiner FORT:

Q. You take your orders from whom?

A. Mr. Holik.

By Mr. MOORE:

Q. So Mr. May, who is the general foreman in charge of these different line crews—I believe the evidence shows that there were at the time in question about eight crews—reports to you?

A. Mr. May and Mr. Winn report to me. Both of them are general foreman.

Mr. Winn is general foreman in charge of the underground?

3349 A. H. E. Winn is foreman of underground and G. E. Winn is general foreman on the Portsmouth side of the river.

Q. Mr. Crafton, on or about May 24th of last year were you requested by Mr. Holik to pass an order along to the foreman on the different jobs to bring in the men before the regular four-thirty quitting time for some sort of meeting?

A. Yes. Mr. Holik requested me to have all men brought in at four o'clock on May 24, 1937, that he wanted to have a talk with them.

Q. Were they brought in?

A. They were.

Q. The effect of that, so far as the time is concerned, as I understand it, was that they used 30 minutes of time from four o'clock until four-thirty?

3350 A. That is correct.

Q. In connection with that meeting?

A. Yes.

Q. For the 30 minutes they were paid just as though they had been on the job?

A. That is correct.

Q. Otherwise than simply passing that order along did you have anything to do with the meeting or did you have any knowledge of the meeting?

A. No; I didn't have anything to do with the meeting. In fact, I was instructed later on in the day that myself or any foreman or any person in a supervisory capacity should not attend.

Q. So far as you know, was there any other meeting held later on at which there was any use of company time for the meeting?

A. There was no other meeting on the company's time. Now, I might say this, that is, in connection with any of this union activity. There have been times when we have brought the men in a little early for some other reason.

Q. Such as Mr. May's sales campaign?

A. Yes; or safety meetings.

Q. Safety meetings, or something of the sort?

A. Yes, sir; such as safety meetings, or something like that.

Q. Mr. Crafton, Mr. Staunton testified that he was re-
3351 leased from the employment of the company on or about November 4th because of his refusal to become a member of the I. O. E. notwithstanding the fact that he was informed that membership in that organization was a condition of employment as a part of the contract. Do you recall what did occur on the morning of November 4th between you and Mr. Staunton in connection with his release?

A. Well, our contract with the I. O. E. specified that any person—I mean who is eligible for membership in the I. O. E.—who was in the employ of the company for 90 days from the signing of the contract, in order to continue working for the company would have to become a member of the I. O. E.

Q. Did you further explain that to Mr. Staunton on the morning of November 4th?

A. That time expired at 12 o'clock midnight November 3rd. On November 4th I was going through the garage and Bill Faust told me that Staunton had not signed up with the I. O. E.

I said, "if he has not signed up he can't go to work."

Staunton was standing over about 35 or 40 feet from me at the time and he looked like he came in to go to work. I went over and told him, "Staunton, in accordance with our contract with the I. O. E. no person can work here who is not a member

of the I. O. E., meaning if he was eligible for membership in the I. O. E., after 12 o'clock last night."

2352 A. I said, "We don't care what other union organizations you belong to or are affiliated with, but you have to become a member of the I. O. E."

Q. What did he say?

A. He said, "I will quit before I sign up."

Q. Was there any effort made to persuade him to join the I. O. E. or anything of the sort?

A. None whatsoever by me.

Q. It was simply explained to him that under the contract he would have to be a member and that the time had expired?

A. That is correct.

Q. And, as I understand it, he told you that he chose to quit rather than join?

A. He said, "I will quit before I sign up." Then he said, "When can I get my money?"

I said, "I can figure it this morning or any time after nine o'clock if you come around; then I will have your pay voucher made out."

Q. He also testified that he asked for a recommendation and that he was told that he could get one if he signed a resignation or release. Did any such thing occur?

A. No, sir; not with me. He didn't ask for a recommendation. I understand that he asked Mr. Holik for one and that he got one. But he did not ask me for it.

3367 Q. Now, Mr. Harrell testified that at the time he signed his I. O. E. card it occurred in your presence, and he made reference to signing it on an automobile—first, he said he started to sign it on your back, I believe, or, first, on the window sill, and

3368 then on your back, and then on the automobile. What did occur about that?

A. I don't know anything about it. He also said I grabbed him by the arm and carried him out in the hall.

Q. Was your first knowledge of that episode when you heard him testify to that?

A. In the hearing here. That was my first knowledge.

Q. Did any such thing as that occur, so far as you know and believe?

A. No, sir; it did not.

Q. Did you at any time every try to encourage or influence Mr. Harrell to sign an I. O. E. card?

A. Mr. Harrell or no one else. I was the one that made the talk in Mr. May's office, and also instructed Mr. Winn that no one should have anything to do with the men in regard to any union

or any organization, and I believe I know better than to do what he claimed I did.

Q. When did you make that explanation in reference to the date that these fellows were brought in for that first meeting; how soon after that?

A. I made the talk to the foremen in Mr. May's office on the morning of May 25th.

Q. That was the next day, then, after the men came in for that meeting?

A. Yes; that is correct.

Q. Now customarily, do the foremen report to your of-
3369 fice the first thing in the morning to get their work orders and instructions for the day?

A. It is customary for them to report to Mr. May's office.

Q. I mean Mr. May.

A. The men that are under Mr. May.

Q. That is right, and your office and his are right together?

A. My office is on the second floor and his is on the first floor. However, I am down there.

Q. Was the report made at the time they would regularly report for work?

A. That is correct. I tried to wait until I got them all in.

Q. So far as you know, did you get them all in?

A. Eight or ten at the time, but I didn't notice specifically to see if they were all there.

Q. To the best of your knowledge were they all present?

A. To the best of my knowledge they were all present.

3371 Q. Now, you have heard the testimony, and I am not going to ask you to repeat it, as to the instructions that came through from the management around in March of this year calling for a reduction in force in the distribution department. Now, who were the persons that participated in the discussions and in the original decision as to what men should be let out?

A. Well, in Mr. May's department, Mr. May, myself, and
3372 Mr. Holik.

Q. You three.

A. And Mr. Winn's department, myself, and Mr. Winn.

Q. You were aiming, as I understood the testimony, at cutting the force approximately 10 percent?

A. That is what I was advised, that due to slack work I would have to reduce my pay roll 10 percent.

Q. Now, the evidence further shows that you three gentlemen found that to do that you needed to let out 13 men. Now, will you just briefly state who were the men that were laid off, and why they were laid off?

A. Well——

Q. Now, among the first-class linemen who were let out.

A. Well, I want to go back just a little bit.

Q. All right, sir.

A. Mr. Holik advised me that we had quite a lot of linemen, and in order to make this cut we had to let out first-, second-, and third-class linemen, as well as helpers and laborers; and I went over the list with Mr. May in regard to his men, and I went over the list with Mr. Winn in regard to his men; and between Mr. May and myself we picked out the men on the Norfolk side to be let out, and between myself and Mr. Winn we decided on whom to let out on the Portsmouth side.

Q. Now, how many linemen did you let out?

A. Two first-class linemen.

3373 Q. Who were they?

A. J. F. Dixon and Branch. I can't recall his initials.

Q. A. M. Branch?

A. A. M. Branch.

Q. Now, what was there about Dixon that resulted in his lay-off?

A. Dixon was the last man we hired. In fact, he came here, I think, in July or August 1937.

Q. Did you have an ample number of other first-class linemen after taking these two out?

A. Yes.

Q. Now, as to Dixon, as I understand it, you gave the main consideration to his short length of service.

A. That is right. Well, we take into consideration three things: First, seniority; second, their ability; and the third, their dependents.

3375 ABE GOLDSTICKER, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MOORE:

3376 Q. Now, Mr. Goldsticker, what is your business?

A. Meat market.

Q. You run a meat market?

A. Yes.

Q. Over in Berkley?

A. Yes, sir.

Q. Where do you live?

A. 124 Irving Street.

3377 Q. Did you ever hear of any such number as 114 Leving Street in Berkley?

Not as I know of.

Q. How long have you lived over there?

A. Practically all my life. I have been in business about thirty years.

Q. Now, who lives with you? Whom do you live with?

A. My mother and my nephew.

Q. Now, are you the brother of Mrs. A. M. Staunton?

A. Yes, sir.

Q. What is her first name?

A. Lillian.

Q. Lillian?

A. Yes.

Q. Now, do you recall about her getting married to Mr. Staunton?

A. Yes, sir. In April.

Q. April of this year?

A. Yes, sir.

Q. Was that about Easter time?

A. Yes, sir.

Q. Where did she marry Mr. Staunton?

A. Pennsylvania.

Q. Where has she lived since she got married?

A. Where has she lived?

3378 Q. Where has she lived since she got married?

A. In Pennsylvania.

Q. Has she or Mr. Staunton at any time since they were married lived at your house?

A. No, sir.

Q. You say they have been to your house?

A. Yes.

Q. They have been there only on a visit?

A. Yes, sir.

Q. When was the first time they came there for a visit after the marriage?

A. They were here—came here in May, and then——

Q. How long were they here in May?

A. About two days.

Q. About two days?

A. A week and two days.

Q. Did you understand that she had come down here at that time on this visit to testify in this labor case?

A. That is what I understand; yes.

Q. Now, did they then go right back to Pennsylvania?

A. They did.

3379 Q. Do you know whether they own their home or do they rent a place?

A. They got a boarding place up there.

Q. They have a boarding place up there?

A. Yes.

3380 Q. Have they done anything to keep up a home at your mother's house or where you live since they got married or have they lived up there all of the time?

A. They lived up there all of the time.

Q. Have you ever heard of their claiming Berkley to be their home?

A. No. It is not their home.

Cross-examination by Mr. HILTON:

Q. Mr. Goldsticker, your sister was married before, wasn't he?

A. Yes, sir.

Q. Did she have a home in Berkley before she met Staunton?

A. She lived with my mother all of the time.

Q. She lived with your mother all of the time?

A. Yes.

Q. Did she have a grown son in Berkley?

A. He will be 14 years old next September.

Q. Is he now living in Berkley?

A. Yes.

Q. With your mother?

3381 A. Yes.

Q. Is this son of your sister living in Berkley? Has this son of your sister been living in Berkley all of the time?

A. The boy?

Q. Yes. He did not go to Pennsylvania with his mother, did he?

A. No.

3382 Q. How many times have they visited you, let us say, since April 1938?

A. Two times.

Q. They have visited you two times?

A. Yes.

Q. Had they visited you at any time in 1937?

A. No.

Mr. HILTON. That is all.

Redirect examination by Mr. MOORE:

Q. Mr. Goldsticker, did you ever see Staunton visiting over at your house before they were married?

A. No.

Q. You never saw him in the house?

A. No.

Q. Did your sister go out to Reno to get a divorce?

A. Yes.

3383 Q. Now, about the boy, does your mother expect to send the boy up there to them as soon as he finishes school?

A. Yes.

Q. Was he just staying here a few more months until he finished this present school term?

A. Yes.

Q. Do you and your mother consider that Staunton's home and that of your sister is up in Pennsylvania?

A. Yes.

Q. And that is the home of the boy?

A. No. The boy is here.

Q. But he is going on up there, isn't he?

A. Yes; he is going up there when school is out.

3384 Q. Did you understand when your sister and Mr. Staunton were down here the other day on that visit that they were very happily situated up there in Pennsylvania and getting along fine?

A. Yes.

3385 WILLIAM T. CRAFTON thereupon resumed the witness stand and, having been previously sworn, testified on behalf of the Respondent as follows:

Direct examination (resumed) by Mr. MOORE:

3386 Q. Do you recall approximately how many first-class linemen that still left?

A. I can't say right offhand. We have, I think, about 20 left.

Q. Did that leave an ample number, or all that you needed?

A. That left all we needed, taking into consideration the second-class and third-class and linemen helpers, to balance the crews.

Q. How many second-class linemen did you let out?

A. One.

Q. Who was that?

A. J. L. Judge.

Q. Why was he let out?

A. Judge, being the junior second-class lineman, and the least experienced. All other second-class men we had, Mr. Moore, had had four years' experience or more and were better men with their experience and with their capacity.

Q. In considering Mr. Judge, did you have any other considerations in mind than the same sort of considerations that you had in mind in letting out Mr. Denton and Mr. Branch?

A. The same considerations.

Q. How many third-class linemen were let out?

A. Two.

Q. Who were they?

3387 A. C. R. Smith and T. N. Harrell.

Q. Why were those two men let out?

A. As to C. R. Smith he was made a third-class lineman on the same date as Harrell and others. We had gotten considerable complaints about him, and he was known to be very trifling.

Q. Now, as to Mr. Harrell?

A. Harrell had had frequent run-ins. It had come to my notice that he had had frequent run-ins with his foreman and fellow employees.

Q. Was he as good a lineman and as experienced as the others?

A. No; he was not as far advanced in the line work as others. And I understood that the others were by far better lineman.

Q. It appears from this list of third-class lineman, which has been filed as Respondent's Exhibit No. 22, who were in the gang on March 31st, that four of those ten men in this third-class group were employed before Harrell, and that Harrell and two others were employed within two days of each other, and the remaining three—namely, Ward, Griffith, and Denson—were employed a short time after he was employed. Now, what was the situation with regard to each one of the men I am now going to talk about? First, take up the case of Denson

A. Denson was employed to work in Portsmouth, and was required to live in Portsmouth.

Q. The record shows that he was employed originally September
11th, 1936, whereas Harrell was employed April 21, 1936, or
3388 nearly five months difference, although both were employed in the year 1936. Now, did you need particularly to have a third-class lineman such as Denson in Portsmouth?

A. We employed him. We employed him as a lineman helper, and he worked up to third class. We was an excellent man—a good man.

Q. Was he living in Portsmouth?

A. Yes.

Q. Was he told at the time he was employed that he would have to live in Portsmouth in order to hold his job?

A. He was. And he told me at the time that he was living in Portsmouth, that that was his home, that he was married and had a family.

Q. If you had laid him off would you have had to put some other man over in Portsmouth to take his place?

A. We would have had to transfer a man over there who did not know the city.

Q. Take Patrick. What was the situation about Patrick? The record shows that Patrick was employed just one day after Harrell; and that Harrell was employed April 21st, and Patrick was employed the next day, April 22nd.

A. Patrick started climbing in September, if I remember right, just after that storm or hurricane in September 1936, and he has

been climbing since. He is far more experienced and far more advanced than Harrell.

Q. They were employed at approximately the same time?

3389 A. Yes.

Q. And they were made third-class linemen on the same date, were they not?

A. Yes, sir.

Q. It has been stated here that the cause of Harrell's accident that he was probably lagging in his progress. Do you have any judgment or opinion on that point, as to whether or not that was the only reason he was lagging, if any?

A. No.

Q. Had you ever had any trouble with Patrick about raising disturbances among the men and getting into fights and getting into trouble with foremen?

A. I never heard a word against Patrick since he has been there. In fact, he is a very quiet fellow. In fact, he never says anything to anybody.

Q. How about Griffith? The record shows Griffith was employed June 17th, 1936, in comparison with Harrell's employment, April 21, 1936. In other words, he was employed approximately two months later, and he was made a third-class lineman on the same date as Harrell, that is, August 1.

A. Griffith was a great big strapping fellow, very bright, and an ex-marine.

3390 Q. Ex-marine?

A. An ex-marine. During the storm of 1936, when we had the hurricane here, he borrowed another fellow's tools, and climbed, and has been climbing ever since.

Q. Is he a particularly promising man as a lineman?

A. Very promising—one of the most promising men I ever saw.

Q. Have you ever had any trouble with him as to his getting in fights or having trouble among his fellow employees or with the foremen?

A. Never heard a single complaint against him.

Q. It appears that a man by the name of Howard was employed there at approximately the same time as Harrell, or three days later, April 24th.

A. Howard was employed in our tree trimming or tree pruning. That does not require the knowledge of a third-class lineman. However, we rated it at that, because we have no classification as a tree surgeon. He has knowledge of that.

Q. You mean the character of his work is easy, difficult, or special?

A. Well, you take people trimming trees around the streets. They have to have some knowledge as to how to trim a tree and treat the wound and keep it from bleeding.

Q. Did he come to you from one of the outstanding tree-trimming companies of the country?

3391 A. No; he was not, but I understood he had a knowledge of that with the city.

Q. I was mistaken on that.

A. You have reference to——

Q. Ward was the one who did that.

A. Yes; Ward.

Q. That is right; but Howard was specially employed for tree trimming, as I understand it.

A. That is correct.

Q. Does that work require peculiar experience and skill different from that of an ordinary third-class lineman?

A. Well, it requires skill to this effect: Tree trimming, if you do it when the sap is up, you have to know how to take care of the wound, keep it from bleeding, and keep from killing the tree.

Q. Did you particularly need Howard, on account of his tree-trimming experience?

A. I need him now, regularly, at all times.

Q. Now, the next man is W. H. Ward, who was one of those I mentioned, and who was employed on September 17, 1936, or approximately five months' difference between him and Harrell. What is the story about Ward?

A. I employed Ward strictly for tree trimming, due to his several years' experience with the Davey tree expert people.

3392 He had knowledge of it. However, he bought tools, I think, the next day or two after I employed him, and very shortly thereafter he was in a line gang, climbing poles, and at this date he is almost as good as any other second-class man we have—an exceptionally good third-class man.

Q. Ward is almost as good as any second-class lineman now?

A. Yes.

Q. How about Patrick and Griffin at the present time, in comparison with your second-class linemen?

A. They are very good. They can do second-class work.

Q. You have explained about the release of five men, two first-class linemen, one second-class lineman, and two third-class linemen. It appears that a man named Putnam is the next man who should be discussed. What is the situation about him?

A. Putnam was the last man employed in Portsmouth as a lineman helper, and when we had to make a reduction and cut

off a first-class man, his services would not be needed, and he was, as I stated, the last man employed, with the least experience.

Q. He was a helper, and was the last man.

A. That is correct.

Q. Now, it appears that two men by the name of Portlock and Piland, who had been employed on January 25, 1937, as linemen helpers, doing work on tree trimming, were included in the 13.

3393 A. I might state, in the beginning, that I will discuss Piland first.

Q. All right, sir.

A. If at that time we employed a new man and put him in as tree trimmer, a little while later on we would need a man in the line gang, and we would transfer him to lineman. Piland was employed as a helper on tree trimming, on the tree-trimming truck. However, his rating was as a lineman helper. He worked on that truck for a considerable time. However, a little later on we put him in driving the trouble truck. We had one or two complaints from a man on duty with him. He said he couldn't see; he had bad eyesight, and we had to remove him from there and put him back on the line gang. He being practically a new man, with no dependents, he was selected to be laid off.

Q. Did he have good eyesight?

A. I never had his eyes examined, but I had complaints about that trouble.

Q. You had had complaints about his eyesight?

A. Yes.

Q. How about Portlock?

A. Portlock worked on the tree-trimming truck for the entire time he was here.

Q. As a helper?

A. He was employed in the classification as lineman

3394 helper. That particular truck does not require real heavy, able-bodied men. He was selected due to the fact that he was rather small and light, and we did not think he would be physically able to do line work.

Q. The record shows that Portlock was employed on January 25, 1937, and Piland was employed on the same date.

A. I think they were.

Q. So that they had only been in the service about two months, had they not?

A. 1937.

Q. Oh, yes; surely—a year and two months. Excuse me.

A. Yes.

Q. A year and two months.

A. Yes.

Q. You say Portlock was particularly light for the work, was he?

A. Yes.

Q. That makes three helpers that were included—Putnam, Portlock, and Piland?

A. Yes, sir.

Q. Was Davenport a helper or laborer?

A. He was a helper—lineman helper.

Q. So there were four helpers?

A. That is right.

Q. Davenport is the last one, and you heard him testify
3395 here, did you not?

A. Yes.

Q. He is the man that testified here by the name of Davenport, is he not?

A. That is correct.

Q. Why was he selected to be included as one of those who were laid off, in those 13?

A. Well, he was selected due to the fact that he had no dependents whatsoever and was a comparatively new man. He was a single fellow and had no dependents.

Q. The record shows that he was employed on March 18, 1936. Do you recall one particular thing that you had in mind about Davenport, indicating whether or not he was a sharp fellow?

A. Well, do you want me to relate that, sir?

Q. Yes; tell us about it.

A. He was a fellow that did not take an interest in the work. I had a foreman tell me that he was replacing a pole, setting a new pole right beside an old pole. He was trying to line the pole up, and he put his pike in the old pole. He said he had to call him three times to call his attention to the fact that he had the pike in the wrong pole.

Q. And you thought he would be a suitable person to be let out; did you?

A. Well, I said he did not take interest in the work. I thought that covered it.

3396 Q. So there were four helpers let out?

A. Yes.

Q. That makes nine. The others seem to be a man by the name of Blackful, a man by the name of Edler, a man by the name of Goffigan, and a man by the name of Clements. Just tell us the story about Clements.

A. During 1936——

Q. That is W. A. Clements?

A. J. W. Clements.

Q. J. W. Clements?

A. Yes.

Q. Oh, yes; here he is—employed on July 6, 1936.

A. That is right.

Q. J. W. Clements, as a carpenter.

A. As a carpenter. At that time we had a man by the name of Nelson as a carpenter. Nelson, being a pretty bright man, we made him labor foreman, and hired Clements in his place. When the reduction was made, we put L. P. Wallace back in charge of the labor foremen and put Nelson back to carpentering. Therefore, Clements' services were not needed.

Q. You simply did not need the extra carpenter?

A. That is right.

Q. And he had been in the service for less than two years?

A. Yes.

Q. Now, how about these other three helpers—Blackful
3397 and Edler and Gofligan?

A. They were hired temporarily as laborers to do excavating for underground work.

Q. Let me check the record here with you and see if you confirm this.

A. Yes, sir.

Q. The record indicates that H. Blackful was employed as a laborer on March 9, 1937; E. J. Edler was employed as a laborer on March 9, 1937; V. Gofligan was employed as a laborer on March 9, 1937, so they had been in the service approximately one year only.

A. That is right. The job for which they were employed was completed.

Q. They were all temporary men.

A. Yes.

Q. Were they colored?

A. Yes, sir; those last three that you called.

Q. That makes the 13, does it not?

A. Yes, sir; that is right.

Q. And now, Mr. Crafton, was the volume of the work such in March, or has it been since March of this year, that the services of 13 men similar to those were needed at all in order to do the work that was required to be done?

A. Absolutely not.

Q. If somebody had to go in order to reduce the forces,
3398 looking at the matter right today, and not merely from the standpoint of the way it looked in March, but up to the present time, would you change in any particular; looking at the matter entirely from the standpoint of choosing the best man for the job, considering his ability, his experience, and his quali-

fications, would you change in any particular any one of the 13 that were let out?

A. No; I would not. I think we made a correct selection.

Q. Was any consideration whatever given to a man's union affiliations or not in selecting the 13 out of approximately 140 men to be released?

A. Absolutely no. As for the union affiliation, I did not know those fellows were members. I don't know how many were members. They might all have been members of the I. B. E. W. or the C. I. O., or whatever they might be. I never questioned any of them about it.

Q. You did not know, as I understand it, what were the affiliations of those 13 men at all?

A. I did not know, and I did not care.

Q. Did Mr. Staunton or Mr. Judge or Mr. Harrell ever make any application or request to be taken back, as far as you know?

A. No; not to me, anyway.

3406 Cross-examination by Mr. HILTON:

Q. Had any of the foremen ever talked to you about the bulletin that was posted on April 26, 1937?

A. I can't recall; I think not.

Q. Had you received any instructions yourself before that bulletin was posted?

A. I can't recall the bulletin, Mr. Hilton.

Q. Well, I will show you the bulletin, which is in evidence as Board exhibit 3 [showing a paper to the witness].

A. (After examining paper.) That bulletin was posted.

Q. What is that, please?

A. That bulletin was posted.

Q. And were you consulted in the preparation of the bulletin, which you have just read and identified as Board exhibit 3?

A. Absolutely no.

Q. Had you seen any bulletin similar to Board exhibit 3 posted at any time before April 26, 1937?

A. Before that time?

Q. Before that.

A. I can't recall.

Q. At the time that bulletin was posted, was there a lot of publicity being given by the local papers to strikes and violence, and so forth?

3407 A. Yes; it was, quite a bit.

Q. Did any of the employees ever talk to you about strikes and violence, and so forth, at that time?

A. Not to my recollection.

Q. Did any of the foremen ever talk to you about it?

A. Not to my recollection.

Q. Then, you gave the instructions to the foremen on the 25th, is that right?

A. Yes, sir.

Q. And did you give those instructions to the foremen individually or in a group?

A. In a group, in so far as the employees under Mr. May; if I remember correctly, all in his office. I waited until such time that they all got together, and I talked to them; and then I went to Mr. Winn's office and made a similar statement in his office.

Q. Just briefly, what were the instructions that you gave?

A. I told them that they were not to have anything to do with the men whatsoever in regard to their labor affiliations, that they were free to join any labor organization that they
3408 so desired, and they must not advise them or tell them in any way, shape, or form what they must do.

Q. Now, did any of the foremen ask any questions in regard to the instructions that you had issued?

A. I don't think so.

Q. As far as you know, the instructions were clear and definite at that time?

A. As far as I know, they knew as much about the Wagner Act as I did, probably more.

Q. Did you tell them what, if anything, would happen in the event they violated the instructions that you had given?

A. No, sir.

Q. Did you make any mention of, say, organizing on company property or company time?

A. No; that was not brought out. That——

Q. Well, did you at that time know whether or not the men had a right to organize on company property and on company time?

A. You cut me off. I started to answer. That was not discussed with me on the 24th, but probably the 25th or the 26th I was advised that no activity was to be permitted on the company's property or on company time.

Q. And who told you that?

A. Mr. W. V. Holik.

Q. And did you in turn pass that information on to your
3409 foremen?

A. I may have. However, my foremen were not active in this union affiliation.

Q. Was it ever brought to your attention that men were organizing on company property?

A. No, sir.

3410 Q. And when was that?

A. That was the morning after the Davenport incident.

Q. And did Harrell's attitude have anything to do with his being laid off in March of 1938?

A. Well, I would say no. The lay-off was due to lack of work, and inasmuch as we had to make a lay-off, he was selected as one to go.

Q. But if your work had kept up, you would not have laid him off in March of 1938, would you?

A. No; I would not.

Q. Nor would you have laid Judge off or any of the other men who were laid off?

A. Absolutely not.

Q. And picking those men for the lay-off, did you follow, say, seniority, ability, dependents, and so forth?

A. We had taken all three into consideration.

Q. And did you consider, say, seniority as the prime factor in making these lay-offs?

A. That was our first thought.

Q. And had that been the policy of the company in making any lay-offs, to follow the policy you just stated?

A. Well, it has been some time since we had a lay-off. The time prior to this one we had a lay-off we laid off the men that were hired temporarily, and when the job was completed we made the lay-off.

3411 Q. Now, do you recall in March of 1938 that the I. B. E. W. was putting on a membership drive among the employees of the V. E. P.?

A. Never heard of it.

Q. Did any of your foremen ever report that to you?

A. No, sir.

Q. You knew that Judge was a member of the I. B. E. W., did you not?

A. I can't say that I did.

Q. Didn't you notice that or see a bulletin that had been posted on the board in August of 1937, and it was signed by Judge?

A. Yes; I remember the bulletin you have reference to. I would just like to see it. I tell you, I knew Staunton's name was on it, but Judge's name might have been there. I knew Staunton's name was on there. Judge's name might have been on there, and it might not. It is very likely it was on there, but if it was I have forgotten.

3412 Q. What is your answer?

A. I think that is correct.

Q. That bulletin was signed by both Judge and Staunton, wasn't it?

A. Judge and Staunton signed it underneath.

Q. Didn't you call Judge and Staunton into your office and tell them they would have to take down that bulletin?

A. I might have done it. I called Staunton. I might have called Judge. I had forgotten all about it until this meeting. I mean this hearing.

Q. Did you at that time discuss the union with Judge or Staunton?

A. Staunton I questioned. He said the I. O. E. had a bulletin up there and he said, "are you going to make them take it down?" I said, "The I. O. E. have a contract with the company whereby in this contract with them they have a right to post a bulletin on the company property." I said, "Until the I. B. E. W. have a contract, they can't post any bulletins."

Q. And that was in August 1937, wasn't it?

A. I think that was dated August 16th. I didn't remember when it was, but I know that it was some considerable time after signing the contract.

3413 Q. You talked with Staunton sometime in November 1937, in connection with his joining the I. O. E., did you not?

A. I didn't talk to him only insofar as I advised him on November 4th that in order to work with the company that he would have to become a member of the I. O. E.

Q. Who told you that he had to become a member or that all of the employees had to be members of the I. O. E.?

A. The contract so stated, and also Mr. Holtzclaw's bulletin that was posted said that any employee who was eligible for membership after 30 days from August 5th would have to become a member within 90 days; and that time expired at midnight November 3rd.

Q. And did Mr. Staunton refuse to become a member of
3414 the I. O. E.?

A. He said, "I will quit before I will sign it."

Q. When he made that statement what, if anything, did you do yourself in connection with his working for the company?

A. Well, I told him this, that so far as we were concerned he could be a member of any labor organization he desired. However, according to Mr. Holtzclaw's bulletin and the contract they had gone into with the I. O. E., that he would have to be a member of the I. O. E. to continue to work there. To use the exact words, I think he said, "I will quit before I sign that card." I think those were the words that he used. Then he asked me, "When can I get my money?" I said, "You can get it this morn-

ing. Come around at any time after nine o'clock and I will give you your pay voucher."

Q. Did you make out any pay-roll slip, let us say, cutting him off of the pay roll?

A. Yes, sir.

Q. What reason did you put on the slip for cutting Staunton off of the pay roll?

A. If I remember correctly, it was for refusing to become a member of the I. O. E.

3440 By Mr. LATHAM:

Q. * * * Was it ever brought to your attention that these arguments that Harrell had engaged in were matters caused by union disputes?

A. I never heard it that way.

Q. You never heard it that way?

A. No.

3464 WILLIAM V. HOLIK, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MOORE:

Q. Will you please state your name?

A. William V. Holik.

Q. And your position with the Virginia Electric and Power Company is what?

A. Superintendent of Light and Power.

Q. On the Norfolk-Portsmouth Division?

A. Yes.

Q. How long have you been connected with the company?

A. Since March 15, 1935.

Q. You have held that position ever since you came with the company?

A. I have.

Q. So you have been with the company these last three years?

3465 A. Yes, sir.

Q. In the organization set up in the company, Mr. Holik, as a practical matter you are the operating man immediately over Mr. Crafton, who has just testified, in the actual operation of the Distribution Department of the company?

A. That is right.

Q. Coming to this meeting of May 24th, a great deal has been said about that first meeting that was held over the garage?

A. Yes, sir.

Q. Will you state just briefly what orders, if any, you gave to Mr. Crafton in regard to bringing in the men to a meeting on that date?

3466 A. I told Mr. Crafton that I wanted all the men brought in to the Cove Street Garage, that I wanted to talk to them and to bring them in at four o'clock and I would talk to them between four o'clock and four-thirty.

He gave those instructions to the foremen working under him, and the men were brought in to the Cove Street Garage around four o'clock. I would say it was within five minutes of four o'clock.

I had given instructions to have the garage on the second floor kept clear of all trucks and cars because that seemed to be the only place that was available for me to assemble all of the men.

There were around 185 people present. These were members of the Distribution Department and of the Installation Department, which also comes under my supervision. I told the men that there would be a meeting at eight o'clock that night in the company assembly hall on Bush Street, and at that meeting some of the officials would be down to explain to them the details and their rights and privileges under the Wagner Labor Act, which I could not explain to them.

Q. Did you say anything whatever in your remarks at that meeting indicating whether you considered that it was unnecessary for them to go into any outside national labor organization and there was no reason why they should do that?

A. No, sir; I did not.

3467 Q. Did you say anything indicating any personal views or preference whatsoever on that subject?

A. No, sir; I did not.

Q. After you had made your few remarks what did you do?

A. Well, I told the men that they had been asked to attend this meeting of these officials and asked them to select representatives to go up and hear what the officials had to say.

3468 Q. Did you indicate to them how many of their number or suggest to them whom they should select, or was that left entirely up to them?

A. That was left entirely up to them. I did not indicate how many should go. Someone asked a question what I meant about representatives, and I told them somebody from the installation department, somebody from the line department, somebody from the meter department, someone from the—I believe I told them the service department; that was what I meant by representatives who could go up and hear what the management had to say and could bring it back and report to everyone else.

Q. Something has been said here about your waiting downstairs until after the meeting. Did you say anything in the meeting about your going downstairs and that you would wait for them, and so forth?

A. I told them that I was going to leave there, and that they should make up their minds as to what they wanted to do, that I would be waiting for them downstairs to find out if anybody was going to attend the meeting, and who those people were; that I had been asked by Mr. Throckmorton to let him know whether there was going to be anybody from my department there to hear him at the meeting.

Q. Was there any urging or pressure at all by you on the men to send anybody, or was it left entirely free for them
3469 to decide whether they wanted to send them or not?

A. It was left entirely free for them to decide whether they wanted to send anybody or not.

Q. Was anything indicated that it would be held against them in any way whatever if they saw fit to send nobody?

A. No, sir; there was no indication that I gave them that the company would hold it against them if they did not come up at all. I also made it plain that I could not explain to them what that National Labor Relations Act was, but if they wanted any explanation, if they cared to hear what was going to be said, they had that privilege.

Q. Did you go ahead and leave the room and go downstairs?

A. I did. I went downstairs and waited at the door of the garage, and after the meeting had started to break up, then all the individuals would come down and hand me a little slip of paper with a name on it. I took those names and took them in to Mr. Throckmorton's office, and told him he could expect the men to be up there to hear him.

Q. Was your only purpose in reporting to Mr. Throckmorton to advise him as to who to expect to come?

A. Yes, sir; or if there would be anybody.

Q. Did you go over to the meeting that night which was addressed by Mr. Throckmorton?

A. I did not.

Q. Now, on the next day did you call in the foremen
3470 and give them any instructions about what their attitude should be?

A. I did not call in the foremen.

Q. Whom did you call in?

A. I went to Mr. Crafton, who was superintendent of distribution; also Mr. Eaton, the other superintendent of installation, and told them to tell their foremen and all of them that had any supervisory capacity that they were not to interfere

in any way with any man in that man's choice of a labor organization; that the company's attitude was strictly that they did not care what the men did, and did not want to know what they did.

Q. Did you tell them or give them any instructions on the point as to any effort to try to influence the men?

A. I told them that they were not to try to influence any of the men, and to be very careful not to give the men any advice as to what they were to do.

Q. So far as you know, were those instructions ever violated at all? Up until this hearing, did you ever hear of any evidence at all coming to your attention as to any violation of those instructions?

A. No, sir; I have not.

3480–A Q. You heard the testimony of the 13 men who were let out, there were only two; that is, Mr. Judge and Mr. Harrell, who were members of the I. B. E. W.

3481 A. Yes, sir; I heard that.

Q. As a matter of fact, did you know that either one of those two was a member of the I. B. E. W., or did you know the labor union connections of any of the 13?

A. I didn't know the labor affiliations of any of the 13 or of any of the men that are now working even. I don't know what they belong to, except that I know that all of them that are working under my supervision now belong to the I. O. E.

3482 Q. Mr. Davis testified that in your talk on the afternoon of May the 24th you stated that you did not see why it should be necessary for the men to join any outside organization, that you thought the men could accomplish as much among themselves as they could otherwise. Did you make any such statement as that at all?

A. No, sir; I made no such statement as that.

3487 Q. Now, Mr. Judge also testified that Mr. Faust said to him that you had told Toots Wallace—told him that Toots Wallace was an I. B. E. W. man and that you could not do anything for him.

A. I never made any such statement as that to Mr. Faust. I do not know who belongs to the I. B. E. W. and who does not.

Q. Well, did you ever take into consideration in these pay adjustments in the slightest degree the question of a man's affiliations with unions?

A. I never did.

Q. Have you any idea as to how any such gossip or rumor as that could have gotten around? Did you ever make any remark that could have given a basis for that statement, so far as you know and believe?

A. No, sir: I do not know of any statement that could have gotten it started.

3489 Q. Now, Mr. Harrell testified that something was said at this meeting on May 24th about your having suggested that Paul Brown take charge of the meeting. Did you ever make any such suggestion to Paul Brown or anybody else about Paul Brown taking charge of the meeting?

3490 A. I made no suggestion. I do not know who made it. I left after making my comments. I made no suggestion of anybody taking charge of the meeting.

Q. Did you ever authorize Paul Brown to make any statements at all, so far as you or the company are concerned, as to the company's attitude, favorably or unfavorably, to the I. O. E. or to an independent union?

A. No, sir: not to Paul Brown or to any other man.

Q. Now, Harrell also testified that the grievance committee of the I. O. E. came to you in regard to his lay-off. Will you state just what did occur in connection with that?

A. Yes, sir. The grievance committee did come to me about Harrell's lay-off. I recall that the grievance was in writ-

3491 ing and signed by Harrell. I never did accept the grievance. I turned it back to the grievance committee and told them that I could not handle it: that if the lay-off had not been necessary, why, he would not have been laid off, and I could not take care of it. I could not consider it as a grievance, because it was necessary for us to reduce our forces, and he was one of the men that had been included in the reduction, and I could not consider it as a grievance.

Q. And did you explain to them why he was included?

A. I do not recall if I explained to them at that time why he was included.

Q. So far as you know, was there ever any effort made to take up the matter with any of your superiors further by the grievance committee?

A. As far as I know; no.

Q. Now, Harrell testified that Mr. Faust told him that you had told Faust that Harrell was laid off strictly on the basis of seniority rule. Did you make any such statement as that?

A. No such statement as that did I make to Mr. Faust.

Q. As a matter of fact, were there any other matters that were considered in Harrell's case in determining whether or not he should be included in the lay-off?

A. There were; yes, sir.

Q. Now, what were they?

3492 A. The fact that Harrell had been having trouble with his coworkers on the truck and that he had been having

some trouble with his foreman; the fact that he was not as good a third-class lineman as some of the others—they were all taken into consideration when Harrell was laid off.

Q. Did you have any other reason in including him than to try to select the best man in ability and from the standpoint of their service in the company?

A. No other reason.

Q. Did you take into consideration in the selection of who should be retained and who should be let out among these third-class linemen any other factors in trying to be fair with the individual man, considering his seniority, his ability, his dependents, and his general service record with the company?

A. No, sir; I did not take any other factors.

Q. Specifically, did you consider in the slightest degree whether he was a union man or not a union man?

A. I did not.

3493 Q. Now, will you briefly just take up that group of men in the third-class linemen and state what was the story as to their relative merits? Take them in the order in which they were employed. It appears that Mr. Spruill, C. H. Spruill, was the oldest one in point of service; he was employed October 24, 1935. Now, what was the story about Spruill in comparison with Harrell, who was employed April 21, 1936?

A. He was an older man in point of service, he was a very good third-class lineman, and had never, so far as I know, given us any trouble from his disposition among his fellow employees.

3495 Q. The next man was Mr. Smith. He appears to have been employed on February 3, 1936, in comparison with Mr. Harrell on April 21, 1936. What was the story about him? What did you have in mind at the time?

A. We had in mind at the time that even though he came into the service earlier than some of the others that it had been reported to me and Mr. Crafton, and Mr. May said that he was a trifling worker and that he had been having telephone calls when he was supposed to be on duty, and they thought they ought to let him go. And I said, "All right. That is sufficient reason to let him go."

Q. So far as length of service is concerned, he was next to the oldest one in that group?

A. Yes.

Q. Did the fact that all of these men have a very short service record with the company enter into your judgment? There really wasn't much difference in point of service between any of them, was there?

A. No, sir. In point of service they were all within four or five months. Some of them had progressed further as third-class linemen than others and, naturally, we kept on hand the ones we thought had progressed the best.

3496 Q. Mr. Spruill, who was one of the oldest man, appears to have been in the service not quite a year and a half?

A. That is correct.

Q. So Mr. Smith, who was next to the oldest, was let out because he was a trifling worker?

A. Yes, sir.

Q. So you gave main consideration to the quality of his work, despite seniority?

A. In his case we did: yes.

Q. Take the next man, Knighton, who was employed April 7, 1936. That was two weeks before Harrell was employed. What did you have in mind in his case when you were considering these men as to the lay-off?

A. Well, he was a good man and there was nothing against him so far as his disposition was concerned, and he was there ahead of Harrell, in the case of Knighton.

Q. In other words, he was two weeks older in service and there was nothing against his record?

A. That is correct.

Q. The next man on the list seems to have b[illegible] man named Johnson, who was employed the day before [illegible]ell was employed, on April 20th, and Harrell was en[illegible]d April 21, 1936. What did you have in mind in compar[illegible] Johnson with Harrell?

A. They told me Johnson was working on the tree trimming doing special work in regard to handling tree conditions

3497 and that he had been hired for that work, and that he was getting along all right in that work, and they needed him in that work, and would continue to have to have him in there even more than they needed third-class linemen. So he was selected to stay.

Q. Hasn't there been quite a change in the tree-cutting problem in the last two or three years?

A. Yes, sir.

Q. I mean from the standpoint of skill involved and the difficulty of handling it to the satisfaction of the customer and the public and the governmental authorities?

A. I suppose we had more complaints from these garden clubs in regard to the way in which we trim their trees and handle their trees than we do from any other cause. Up until the fall of 1937 we had the Davey Tree Trimming Company do most of

our tree-surgery work. Our only other fellows working on the tree-trimming truck were doing more or less rough trimming. When times began to slack off in the first of 1938 we dispensed with the services of the Davey Tree Trimming Company.

Q. It is somewhat of a special service?

A. Yes. So now my own men are doing the work that the Davey people were doing. We figure we would try to do it with them and keep our own forces as long as we could.

Q. And Mr. Johnson was one of those skilled tree men?

3498 A. Yes.

Q. Harrell comes in there April 21, 1936. The next man after him was Mr. Patrick, who was employed the next day, April 22, 1936. What did you have in mind in comparing Patrick with Harrell?

A. I was told Patrick had bought his climbing tools after the 1936 hurricane and that he was much further advanced as a third-class lineman, and that he had never given them any trouble. So we kept him.

Q. He was much more experienced?

A. Yes.

Q. And he never gave trouble?

A. That is right.

Q. Is he the fellow that Mr. Crafton referred to as being such a big, strong fellow? Which one was that, if you recall?

A. I believe he said Patrick was an ex-Marine, and a big, strong fellow. He and Griffith both, as I recall it, are pretty strong men.

Q. Howard is the next man in that group. He was employed three days after Harrell, on April 24, 1936. What did you have in mind in comparing Howard with Harrell?

A. Howard was in the same category, as I recall it, as Johnson was; that is, working in the tree trimming, and his services were required there. We needed him more in the tree-trimming crew than we did as a lineman.

3499 Q. Did you have anything in the way of complaints about Howard's services?

A. No complaints have ever come to my attention any one of these three third-class linemen, with the exception of Harrell.

Q. Take Griffith, who is the next man, who was employed June 17th, 1936. What did you have in mind in comparing Griffith with Harrell?

A. The fact that he was a good lineman—that is, a good third-class lineman—and had bought his tools possibly a year before Harrell, and had had more experience as a third-class lineman, and that there was nothing against his record, and we would keep him.

Q. The next man in point of time of employment was Denson, September 11, 1936. What were the facts about Denson that you had in mind?

A. Denson was hired to work in Portsmouth and to live in Portsmouth. That was one of the requirements under which he got the job, that he would be over in Portsmouth so that he would be available for duty in emergency. We did not consider it fair to take him out when he had told him he would have to live there and then put somebody else over there who did not live there. That is the reason he was kept on the pay roll.

Q. The last man is named W. H. Ward, who was employed September 1936. What did you have in mind in regard to Ward?

3500 A. The fact that Ward was another man who could do expert tree-surgery work and that he could climb and work on the poles as well as do this tree-surgery work and, if necessary, we could take him off of climbing and put him on the tree trimming truck. He was a good man and had been climbing practically from the day we hired him, and he was further advanced in tree-trimming work than Harrell or Smith and also advanced as a third-class lineman further than either Harrell or Smith, so we decided to keep him.

Q. As to the ability of these men, there are only three that seem to have been hired after Harrell any time at all to amount to anything—that is, Denson, Griffith, and Ward. How does the ability of this man stand today, for example, in comparison with second-class lineman? Do you consider that those men are about advanced far enough to be recommended for second-class linemen, or how have they progressed?

A. Mr. Moore, I have to get my information on that from Mr. Crafton and Mr. May. It is my understanding that any one of those men could do second-class line work.

Q. Mr. Holik, has there been a general slacking up in your work since January 1st of this year?

A. Yes, sir; there has been a considerable slacking up in our work. I noticed it back in the fall of 1937. The way I could tell was the fact that the rate at which the new work
3501 was coming in was slacking up.

Q. Are you up well with your work?

A. We are very well up with our work; yes, sir.

3503 Cross-examination by Mr. WHITE:

Q. You referred to grievances on wage increases. As a matter of fact, haven't other types of grievances been brought up for your attention?

A. Yes, sir. I have had grievances brought up to my attention on working hours, overtime, safety condition on the truck, and for some arguments on the truck. I have had grievances of all types brought to my attention and I have tried to handle them.

Q. As a matter of fact, one of the grievance from the installation department involved the question of the men wanting to get rid of a supervisor or have him transferred or something?

A. Yes, sir. I felt bad over that grievance because it did cover one of my supervisors; but we did handle it satisfactorily, I think, to both parties.

Q. In other words, the men now deal with a different supervisor, do they not?

A. Yes, sir.

Q. They got some wage adjustments also in the distribution, engineering and installation department, didn't they? They were not all confined to the line department, were they?

A. No; they were not all confined to the line department.

3504 We got some adjustment in the installation department. Or they did, I mean. I agreed to them.

Q. You also had a grievance up from the distribution, engineering, and installation department about the salary of men who were required to work on holidays, didn't you?

A. Yes, sir; I did.

Q. Was that adjusted satisfactorily to the men?

A. It was.

Q. Have you any idea how many grievances you had to handle since the contract with the I. O. E. went into effect last August?

A. I should judge it was in the neighborhood of 50 or 60.

Q. That is merely in the groups under your direct supervision?

A. Yes, sir.

3505 Q. In August 1937, shortly after the contract was executed between the company and the I. O. E., you had right much difficulty in determining who was going to get that five-cent increase that was supposed to go over to the linemen, didn't you?

A. We did.

Q. How many discussions do you recall you had with representatives of the I. O. E. about the determination as to who was to be declared a lineman?

A. I think we had possibly four or five discussions, or as many as five discussions, as to who was going to be rated as a lineman and entitled to get that five-cent increase. I don't believe a lot of men that are now rated as third-class linemen would ever have been rated third-class linemen if it had not been the result of these grievances in order to get the men additional increases.

3507 Cross-examination by Mr. SPENCER:

Q. Mr. Holik, on May 24th, I believe you stated that you got word to have the men brought into the plant, so that you could make a talk to them. Who instructed you to have the men brought in on May 24th?

A. I was instructed to have the men brought in by the officials of the company.

3508 Q. Which one of the officials of the company?

A. I believe that was by Mr. Holtzclaw at a meeting which I had attended in Richmond on May 20th.

Q. And he told you then to have the men in on the 24th?

A. He didn't tell me what day to have them brought in. No one told me to have it done on the 24th. I made my own decision to talk to the men on the 24th.

Q. Now, when did you learn that the meeting was going to be on the 24th?

A. When did I learn that?

Q. Yes; when did you know that the meeting was to be on the 24th, of which Mr. Jones and Mr. Smith testified to?

A. I believe it was around 1:30 to 2:30 in the afternoon.

Q. When the men were brought in in the afternoon, you made this talk to them?

A. Yes, sir.

Q. You did tell them to elect representatives to hear the talk, did you not?

A. I told them to select representatives to meet with the officials of the company

Q. How many men were selected?

A. As near as I can recall, Mr. Spencer, there were probably eight or nine men selected to go up there.

Q. How about Mr. Faust and Mr. Brown?

A. I think they were on that list.

3509 Q. Is it not true that there were only two men selected?

A. No, sir. There were men selected from the line department in Norfolk, from the installation department in Norfolk, and from Portsmouth, and there were at least seven or eight men from my department that went up there to hear what the officials said. In fact, I know—I remember one name in particular, because it was a negro from a laboring crew who went up there to hear it.

Q. When did you instruct the ones that had been selected to go up and hear this talk by the officials? Did you tell them that a meeting was going to be held that night? When did you tell the ones that were selected that the meeting was to be held on the night of the 24th?

A. Between 4 and 5 o'clock, when I talked to them in a group. I never told any of them individually when it was going to be held. I talked to all of them together, and told them that the meeting would be that night.

Q. Did you talk to the ones that were selected to go and hear Mr. Holtzclaw talk before they went to the meeting on the night of the 24th?

A. No; they came down the ramp where I was waiting, outside of the garage and turned over the slips of paper to me, and I immediately took those slips of paper up to Mr. Throckmorton's office and told him they could expect these men to be there that night. I never talked to those men at all.

3510 Q. Mr. Throckmorton had given you instructions to bring such a list of names to him, if there were representatives selected?

A. He told me that he wanted the names of the fellows that were going to attend the meeting, because he didn't know whether there would be anybody there from the light and power department or not, and he wanted to know whether there would be anybody over there, and he asked me to let him know who they were going to be.

Q. Did he tell you, in case none were selected, to let him know, so that you could appoint someone to come up?

A. So that I could appoint someone?

Q. Yes.

A. No, sir.

Q. If the men did not appoint the representative that you would appoint one?

A. No, sir; he didn't tell me. My instructions were very clear on that point, that the men could either come to this meeting or they did not have to come *to come* to the meeting.

Q. However, they had to come and hear your talk?

A. No, sir; they didn't have to, because I called the meeting, and I didn't tell them what I was going to talk about.

Q. You told your foremen to bring the men in?

A. Yes.

Q. Did you tell your foremen the purpose for bringing

3511 the men in?

A. No, sir.

Q. Did any of them inquire as to why they were being brought in early?

A. No, sir.

Q. On the 25th, you called Mr. Crafton and Mr. Eaton in and gave them certain instructions; did you not?

A. I gave those instructions on the 24th, Mr. Spencer, about an hour before I called the general meeting at 4 o'clock. It was

around 3 o'clock in the afternoon, when I gave them those instructions.

Q. So that you did give your instructions to the men on the 25th?

A. As I recall it, I gave them to them on the 24th, and I gave them further instructions on the 25th.

Q. What were your instructions to Mr. Crafton and Mr. Eaton on the 24th?

A. They were to instruct the foremen and all other supervisors; that the company wanted to make it plain to those men, the supervisors and foremen, that they were not to have anything to do in advising the men under them as to their choice in any kind of a union affiliation; that they were not to advise their men one way or the other, but they were to keep strictly hands off of them.

3514 Q. What did you gather from Mr. Holtzclaw's talk on the 20th; what was your impression of that talk?

A. I gathered from that talk that there was considerable doubt in the employees' minds all over the property as to just what their status was under the Wagner Relations Act. I believe it is, and that he wanted them to understand clearly that they had all the right in the world they wanted to to organize if they saw fit; in fact, that he had received some petitions from several departments of the company, and that he did not know himself just how he was going to handle them.

Q. You are superintendent of the light and power department here in the Norfolk division, and have been since 1935?

A. Yes, sir.

Q. Did that condition exist in your department?

A. Not in my department, to my knowledge.

Q. Had you ever heard of such a condition as that existing prior to the time that you heard Mr. Holtzclaw's talk on the 20th?

A. No; not until I was called to Richmond.

3518 Q. Mr. Crafton stated that you knew something about the Gregory transfer. Did you handle that?

A. Yes, sir; I did.

Q. Will you state for the record what occurred in regard to this man Gregory?

A. Yes, Mr. Latham. I received a grievance from the grievance committee of the I. O. E., signed by most of the members on Mr. Abernathy's truck, and in which these members stated that they could not get along with Gregory. So, naturally, I investigated. I, of course, don't know all the things that are going on on the truck, but I did investigate it. I talked to the foreman, Mr. Abernathy, and I talked with Mr. Gregory, and I had talked with Mr.

Lawrence, and, as near as I can determine, Mr. Latham, it was a personal matter—it all boiled down to a personal matter between Lawrence and Gregory. So to settle the thing I took them both off the truck and put them on other trucks, to keep them apart.

I transferred one of them to the installation department, and told them to put Lawrence on the other truck. The complaint did not say that there was anything at all wrong with Mr. Aber-
3519 nathy, or that they were dissatisfied with his work. They were complaining about this man Gregory. My investigation showed that it was a personal quarrel that they had had for some reason. I think Lawrence claimed that Gregory was just a young third-class lineman, and was trying to tell the first-class men what to do, and when to do it, and Gregory claimed that Lawrence was making him do all the work, or something like that, and they couldn't get along. So I took them both off the truck.

3521 Q. Coming back to Gregory, do you know whether Gregory was laid off for having difficulty?

A. For having——

Q. Difficulty with his fellow workmen?

A. No, sir; Gregory is working—I put him in the installation department, because they had need for a man in the installation department that he could handle, and we have not put on
3522 anybody in the installation department because we have not had any construction work; but most of these men that we put on were all hired on account of this terrific expansion which we had in '36 and '37 due to our rural line construction. It was over and above our ordinary run of operating and maintenance. So that is the reason when this work was played out that we had to make this lay-off.

Q. Gregory since his transfer has, in fact, been promoted, hasn't he?

A. Yes, sir; the same conditions under which Mr. Judge got his promotion. In order to get an increase I had to transfer him, so I put him into the other department, where we had an opportunity to rate him from third- to second-class lineman. That is one way I was able to do it. I wanted to give the man an increase at that time, because I did not know when he would get another one.

Q. Well, did you transfer him to get him an increase or did you transfer him because of his difficulty with the men?

A. Well, I transferred him for two reasons, because of his difficulty with Mr. Lawrence, and also the fact that it presented a good opportunity to do two things at one time, getting him off of the truck where he was having this trouble and also fill a position vacant in the installation department.

3531 Cross-examination by Mr. LATHAM:

Q. As I understand it, when the three of you together, that is, Mr. May, Mr. Crafton, and yourself, 3532 you just merely approved their recommendations because of their being closer to the men and understood their qualifications better than you did.

A. But I also had them explain to me in each case what their reasons were for letting the man go.

Q. I also understood you to say that several men were giving you no trouble, and that was one reason that these men given for keeping them. What did you mean by that?

A. That was in the discussion of linemen third-class. They would come to a man's name, and they would say, "We have had no trouble with him." And when Harrell's name was mentioned, they had had trouble with him. And that is what I mean when I said they had not given any trouble. I had been told, Mr. Latham, back in November, that Harrell had been having trouble with his foreman. He called one of the foremen a liar, or something like that. So, naturally, he was considered as being a man who was giving some trouble.

Q. Did you consider these altercations that he had with the various men that had been reported to you as trouble?

A. They had not been reported to me.

Q. They had not?

A. With the exception of one. That was the trouble he had back there sometime in November with one of the foremen, although I don't remember which foreman it was. But Mr. 3533 Crafton and Mr. May had both told me that they were not able to work Harrell and were going to have to let him go; and I told them back in November that if he gave them any more trouble to just let him go.

3534 Redirect examination by Mr. MOORE:

Q. In the determination of how these 13 men were to be selected, you had, as I understand it, from 130 to 140 men in the crews in the distribution department?

3544 A. That is correct.

Q. At the time the decision was reached that there had to be a lay-off?

A. That is correct.

Q. And you understood that it was the desire or it was necessary to cut them by about 10 percent, did you not?

A. Yes, sir.

Q. Now, from the standpoint of sound policy and proper treatment of the men, did you lay down to Mr. Crafton and Mr. May before they brought you back any recommendation on that, any

general plan by which it was to be determined as to who should be laid off of those 13? In other words, was there any suggestion on your part as to whether there should be some first-class, some second-class, some third-class, some helpers and some laborers, so as to distribute the 13, or did you make any suggestion on that point?

A. Yes, sir; I told Mr. Crafton that I thought the best way to handle the lay-off so that everybody would be treated alike, would be to lay off first-class linemen, second-class linemen, third-class linemen, and laborers, so that it would be—so that you could see definitely that we were trying to keep our forces balanced, and that all departments would be hit together in the lay-offs.

Q. Did you have any other purpose in making that suggestion to them, except to try to treat all classes of men
3545 fairly and to distribute as fairly as you could the unfortunate situation?

A. None whatever.

Q. Of having to lay off men?

A. None whatever. I figured that if we did it that way, there would be less men as a total cut off, that we would not have to lay off as many men, and if we put them all in one class, it may have taken all of my ground men or all of my second-class men or all of my third-class men. I wanted to spread out so we would not have to lay off any more than we had to.

Q. By doing it that way, was not the practical effect of it to lay off one complete crew, but to distribute those who were laid off among all the men?

A. Yes; there was one truck taken off the road—one complete line truck.

Q. Was that not, in your judgment, a much better way, from the standpoint of the company, in trying to keep the best men, rather than to just haul off, as you might say, and just lay off one complete crew, no matter how old they were, how young they were, or how good they were, in comparison to other men?

A. Yes; I would not have consented to laying off one crew all together.

Q. Just arbitrarily?

A. Arbitrarily; no, sir. I took what I thought was the
3546 fairest and squarest and easiest way to handle the situation and where everybody would be given consideration in it.

Q. You laid off what was, in effect, one complete crew?

A. One complete crew.

Q. Plus a few laborers?

A. Laborers and a carpenter; yes, sir. That is what it amounted to.

3563 JOHN S. McFALL, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MOORE:

Q. Will you please state your name?

A. John S. McFall.

Q. Mr. McFall, you are the safety man of the Virginia Electric and Power Company in the Norfolk-Portsmouth Division, are you not?

A. Yes.

Q. You have held that position how many years?

A. Since November 1930.

Q. Very briefly, Mr. McFall, what are your duties as safety man?

A. My duties are primarily accident prevention; that is, preventing accidents, seeing that the employees have adequate,
3564 safe equipment to work with, and other safety activities that would have a tendency to eliminate accidents.

3581 Cross-examination by Mr. HILTON:

Q. At any of the times that you talked with Harrell in July or August 1937, did you ever mention the word "union" to him?

A. Not to my knowledge.

Q. And had you received any instructions in connection with your duties as to what you should do in the event that any man asked you for advice in connection with labor organ-
3582 izations?

A. I think that was common knowledge among the supervisors of that department—not to do anything to interfere with any organization.

Q. Had you received any instructions from your superior in connection with what you should do in the event that a labor organization should be started?

A. Whom do you mean by my superior?

Q. Who is your superior?

A. I have one superior and that is Mr. W. E. Brown. Mr. Brown is in the main office, and my office is at Cove Street. Mr. Brown hadn't given me any instructions. In fact, I only see him about once a month, at the monthly safety meeting. Mr. Brown had not given me any instructions.

Q. Had you ever received any instructions from anyone around May 25, 1937, say?

A. I was in the office, and Captain George Winn—or Captain George—made the statement, I think, on the 25th that Mr. Crafton was in the office, and he stated he did not want any supervisors or any foreman to influence any of the men in any organization.

Q. That was substantially the language he used in giving those instructions; is not that right—the language that you have just used?

A. Yes.

3586 Q. Now, do you recall that Harrell ever asked you for advice in connection with his joining any labor organization?

A. I don't recall his asking me for any advice; no.

Q. Well, did you, in any manner, discuss unions; that is, you and Harrell?

A. Discuss unions?

3587 Q. Yes; that is right.

A. I would say no, we didn't discuss unions.

Q. Well, did you discuss labor organizations?

A. We didn't discuss labor organizations.

Q. Well, did you discuss any union affiliation or membership in any kind of a labor organization?

A. Not to my knowledge.

Q. You don't recall whether you did or not?

A. I don't recall discussing any labor organization with Mr. Harrell.

Q. Did you ever discuss any of the officers of any labor organization?

A. I haven't discussed any officers.

Q. Did you at the time, in August 1937, have any information as to who the officers of the I. B. E. W. were?

A. I had no information.

Q. Do you recall ever reading in the newspapers the officers of the I. B. E. W. local?

A. No, sir; I have not.

Q. Well, had you heard any rumors as to who the officers were?

A. I haven't heard any rumors as to who the officers were.

3603 RAYMOND G. CARROLL was recalled as a witness for and on behalf of Respondent, and having been previously sworn, testified as follows:

Direct examination by Mr. MOORE:

Q. You have already testified in this proceeding, have you not?

A. Yes, sir.

Q. In your direct testimony I asked you whether or not you had attended any meetings of the employees in the Transportation Department of the company after May 25, 1937, at which there was any discussion of wages or working conditions or

unions or anything of the sort. Inadvertently I fell into the May 25th date. What I meant to ask you was had you attended any meetings at all on that subject?

A. I have not.

Q. At any time?

A. No, sir.

3604 Q. At my request, Mr. Carroll, have you prepared, or have you obtained a photostatic copy of the accident record of a former employ' named E. M. Mann? I hand you two papers which I will ask you to identify, and I will ask you whether 3605 or not those are photostatic copies of the company's official record with respect to Mr. Mann?

A. Yes, sir; they are.

Mr. HILTON. Mr. Examiner, I will make this informal objection to the document going in showing Mr. Mann's accident record for the reason Mr. Bishop definitely testified that he was discharged because he referred to Mr. Bishop as "Bishop."

Mr. MILLER. The record will speak for itself. We do not agree with your version of it. He said he did consider in part the accident record. At one time in his testimony he did make the statement which you say he made, but later on in his testimony he said further that he considered the accident record as well. And I would like to have it go in for whatever weight the Examiner thinks it is entitled to.

Trial Examiner FORT. Is that your only objection, Mr. Hilton, to its admission?

Mr. HILTON. That is all. I do not object because it is not a true and correct copy of the original. We have been having those come in all during the hearing.

Trial Examiner FORT. I will admit it in evidence as Respondent's Exhibit 46–A and 46–B.

(The documents above referred to were received in evidence and marked "respondent's exhibits 46–A and 46–B.")

By Mr. MOORE:

3606 Q. What was the cost of those accidents to the company? You may use your own memorandum if have kept it.

A. $432.68.

Q. In number of accidents and in the character of the accidents is that an unusually good, medium, or bad record?

A. It is a very bad record.

Q. Does that record, basing your opinion upon your experience, indicate that Mr. Mann is accident-prone or not?

A. I am of that opinion.

3607 Q. Has either Mr. Elliott or Mr. Bolton or Mr. Mann ever asked you for reemployment since they were released, so far as you know?

A. No.

3609 Cross examination by Mr. HILTON:

Q. I believe you stated the total accidents cost the company roughly $432 and some cents?

A. Yes, sir.

Q. I notice here that there is an accident of September 21st or September 20th, 1936, which apparently cost the com-

3610 pany $314.00. Is that correct?

A. That is correct.

Q. I believe that accident was a passenger caught in the rear door. Isn't that right?

A. That is what this record says.

Q. So that accident recovered all of the damages that the company had sustained by reason of these accidents that Mr. Mann had had?

A. That is approximately three-fourths of the cost of his accidents.

3612 Q. Do you know whether or not Mr. Man was ever called in and disciplined in any manner because he had these accidents?

A. Mr. Bishop has advised me he had warned him several times about his accident record.

Q. Have you ever seen the records of any other street car operators than Mr. Mann's?

A. I have.

Q. Of course, you have a number of operators who have cost you a great deal more money over that same period of time, haven't you?

A. Oh, yes.

Q. Would you have discharged Mr. Mann because of the accident that he had, as indicated in respondent's exhibit 46?

A. I think that action was just about to take place when Mr. Mann was discharged for another reason.

Q. Up to that time he had not been discharged or disciplined by reason of the accidents he had had?

A. Yes, sir. He had been warned several times about the accidents.

3641 JACK G. HOLTZCLAW resumed the stand and testified further as follows:

Direct Examination by Mr. MOORE:

Q. Mr. Holtzclaw, in connection with this lay-off that occurred on March 31, 1938, had there been any plan whatsoever looking

toward that lay-off prior to February 1, 1938, or did events so materialize shortly after the first of January and in February that it just developed to be a necessity?

3642 Q. As I understand it, while the new construction work was fading and had about faded and had been completed by the end of 1937, had there been any plan whatever made with a view to a lay-off prior to February 1, 1938, or were you still hoping that it would not be necessary to lay off the men up until February first?

A. We had made no definite plan nor even seriously considered a lay-off until about February, when the 1938 budget was approved by the officials of the company and by the board of directors. We recognized then very clearly that there was a very small construction program ahead of us for 1938, and

3643 with a greatly augmented crew in the line department it was hopeless to keep them busy, and there was, therefore, nothing to do but make plans to reduce the force in keeping with the new construction budget. Therefore, in February we started giving consideration to it and in March we saw the unfortunate necessity of carrying it out.

Q. The Examiner asked you to obtain information with regard to the personnel in the office of Mr. Miles Cary, who is an engineer for the company, and at the time you were on the stand you were not sufficiently familiar with the facts to give those facts. Have you checked up that situation as to the personnel in that office throughout the year 1937? If so, will you just state what were the facts?

A. I have. I advised the Examiner at the time of that question that I did not have the information but that I would get it for him. I have it now. Mr. Cary, with whom I have talked personally, is superintendent of system operations. He has in his office two engineers, a relay engineer and a transmission engineer. The relay engineer has an assistant engineer and two relay testers and, in addition, two young men who are clerks and whose duties are to prepare statistical and operating reports such as may be required by them by Mr. Cary. Mr. Eugene Underwood is one of these last two named men. That is Mr. Cary's personnel, Mr. Examiner.

Q. In addition to Mr. Cary, as I understood your testi-

3644 mony, he has seven persons in all in his office.

A. That is correct.

Q. So far as you know and believe, has Mr. Underwood at any time during 1937 or 1938 had any supervisory duties of any kind or description?

A. No supervisory duties whatever.

3664 TESTIMONY ON BEHALF OF THE INTERVENER

WILLIAM W. FAUST, a witness called by and on behalf of the intervener, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. WHITE:

Q. Please state your full name.

A. William W. Faust.

Q. Where do you live?

A. 413 Raleigh Avenue, Norfolk.

Q. By whom are you employed, and in what capacity?

A. As lineman with the Virginia Electric & Power Company.

Q. Do you hold any office in the I. O. E.?

A. Yes, sir; general chairman of the general committee.

Q. How long have you been in the employment of the Virginia Electric & Power Company?

A. Since July 16, 1929.

Q. How long have you been a member of the I. O. E.?

3665 A. Since either June 18th or 19th, 1937.

Q. Where did you join the I. O. E.?

A. Where did I join it?

Q. Yes; how did you join?

A. I signed the card in my own home.

Q. Not on company property then?

A. No, sir; I don't think so.

Q. Nor during working hours?

A. No, sir.

Q. Mr. Faust, will you describe the set-up of the I. O. E.? For example, who composes the general committee of the I. O. E.?

A. The general committee is composed of ten men; M. E. Wash, bus driver, general secretary——

Q. Will you state where he lives?

A. He lives in Richmond.

Q. All right.

A. George A. Roberson, plant electrician in the power plant in Richmond; George Shepard.

Mr. SPENCER. What is Mr. Roberson's position?

The WITNESS. Plant electrician.

Mr. SPENCER. With the I. O. E.

The WITNESS. He is a member of the general committee.

Mr. WHITE. These are all members of the general committee that the witness is naming now.

The WITNESS (continuing). Mr. George Shepard, in

3666 the sales department, Petersburg; Mr. David Early, representing the Richmond accounting department, but he

lives in Hopewell, I think; Mr. D. M. Tatem, switchboard operator, Reeves Avenue power plant, Norfolk; Mr. M. D. Hough, railway operator, street car operator, Norfolk; Mr. S. N. Woodard, Jr., earnings clerk in the Norfolk accounting department; Mr. L. H. Walsh, clerk in the office for the gas company in Norfolk; and Mr. C. McHorney, gas service man, gas company in Norfolk; and myself, a lineman.

Q. Do you belong to any other committee in the I. O. E. other than this general committee?

A. I belong to the electric division committee, the Norfolk interdepartmental committee, the constitution committee, finance committee, and labor committee.

Q. Who composes the electric division committee?

A. The names of the men?

Q. If you can tell them, yes, and state what branch each represents.

A. Mr. E. T. Underwood is representative of the system operators and engineers.

Q. Richmond?

A. Richmond. Mr. A. D. Bertolet, representative of distribution engineering installation; Mr. George P. Colonies——

Trial Examiner FORT. Just a minute. I am wondering if you have not a number of these committees——

3667 Mr. WHITE. I am not going to ask him to name the grievance men.

Trial Examiner FORT. I am just wondering if it would not be feasible to supply a list showing all of those men.

Mr. WHITE. Yes; it would be.

Trial Examiner FORT. Rather than to go through the names of the men on the committees, unless you have some special reason for bringing it out in this way.

Mr. WHITE. I particularly want the electric division, and have the general chairman himself tell us. I will supply the names of all the committees.

Trial Examiner FORT. I was merely trying to think of a way to save the record.

Mr. SPENCER. Where is Mr. Bertolet from?

The WITNESS. Mr. Bertolet, distribution engineering installation in Richmond.

Mr. SPENCER. And Mr. Colonies?

The WITNESS. Mr. Colonies is from the power plant production in Richmond.

Mr. SPENCER. In Richmond?

The WITNESS. Yes, sir.

(Continuing.) Mr. Roberson, production and maintenance in Richmond; Mr. T. I. Varham from the transmission department

in Petersburg; and Mr. M. Staunton, line department in Richmond.

3668 In Norfolk, Mr. C. H. Warren, distribution engineering installation; Mr. D. M. Tatem, from the production operation; C. G. Steele from the production maintenance, and myself from the distribution construction, line department.

By Mr. WHITE:

Q. In addition to the electric division committee, what other committees are there in the I. O. E.?

A. Gas division committee, accounting, sales, and general office division committee, and the transportation division committee.

3669 Q. I hand you Board's Exhibit No. 36, and ask you if that is a copy of the constitution and bylaws of the I. O. E.

A. This is a copy of the constitution and bylaws of the I. O. E. with two exceptions.

Q. This is a copy of the constitution and bylaws of the I. O. E. as the constitution was adopted on June 15, 1937, is not that correct?

A. Yes, sir.

Q. I believe you stated that there were two changes made. Will you please state what those two changes are?

A. There were two amendments made to the bylaws; one made on the 17th of July 1937, changing the method of electing grievance committeemen from the way it is stated in the bylaws to the way it is stated in the amendment, and that can be produced; and the second change was made—I don't have the date, but I think it was in March of this year, in which the amount of dues and the way the initiating fee was paid was changed.

Q. And what was the change in the amount of dues?

A. The change in the amount of dues was from $2 per year to $6 per year.

Q. What change was made in the initiation fee?

A. The change in the initiation fee was made from 25 cents a member, to $3, which paid his dues for the first six months, or any part thereof.

3670 Q. You have mentioned interdepartmental committees. How many of those are there?

A. Two.

Q. What are they?

A. They are composed of all of the representatives on the division committees from Norfolk and from Richmond. The Norfolk interdepartmental consists of Norfolk representatives, and the Richmond interdepartmental consists of the Richmond representatives.

Q. Do all of those committees that you have mentioned hold regular meetings?

A. Yes, sir.

3672 Q. I hand you a paper entitled "The Proposed Plan of Organization of the Independent Organization of Employees of the Virginia Electric & Power Company," and ask you whether that chart correctly sets forth the organization of the I. O. E.

A. Not exactly.

Q. What is the difference between the present organization and the chart?

A. These two last numbers and this electric division committee here. There is no transmission or system operating department in Norfolk.

Mr. WHITE. I desire to file this in evidence as intervener's exhibit No. 2.

Trial Examiner FORT. It may be received.

(The document above referred to was marked "intervener's exhibit No. 2" and received in evidence.)

By Mr. WHITE:

Q. On that chart, Mr. Faust, the agencies are referred to as councils. You have referred to them as committees. Which is the correct term?

A. Committees. The word "council" was stricken out on the night the constitution was adopted, on June the 15th, if I remember right, due to the fact that the word would probably be mixed up with the counsel as speaking of a lawyer.

Q. You have referred to grievance committees, Mr. Faust. Will you please describe what the organization of the

3673 grievance committees is under the I. O. E.?

A. Each department have elected their own grievance committeemen, and there has been set up a definite procedure that the grievance committee is to go to the different departments of the management. Each grievance committee goes to the top of the management in his own department; and his second step, if you are not satisfied there, he goes, in Norfolk, to the vice president, Mr. Throcknorton, and the head of the division affected; and in Richmond they do practically the same thing there. On the third step, the entire division committee from the division affected go to Mr. M. C. Smith and Mr. T. Norman Jones; and on the fourth step, the general committee takes a grievance to Mr. J. G. Holtzclaw; and the fifth step, goes to the arbitration board as set up in our contract.

Q. You have referred to certain departments. Do I understand that the I. O. E. is divided into four departments: Transportation; electric; gas; and accounting, sales, and general office?

A. Yes, sir.

Q. Are those four divisions themselves subdivided into smaller divisions?

A. Yes, sir; each division. The transportation division is divided into railway, bus, track, shops.

The electric division is divided into—in Richmond it
3674 is divided into system operating, transmission, production operation, production and maintenance, distribution engineering and installation, and distribution and construction.
3675 In Norfolk it is production operating, production maintenance, distribution engineering and installation, distribution and construction.

The gas department is divided into three sections: Gas production, gas maintenance, and gas distribution.

The accounting and sales is divided into three sections: The accounting, sales, and general office.

Q. It has been testified that the operations of the Virginia Electric & Power Company are divided into two divisions, the Richmond division and the Norfolk division. Please state whether these voting sections are divided the same way.

A. The voting sections are divided the same way.

Q. How are members of grievance committees selected by these voting sections?

A. How are they selected or elected?

Q. Elected.

A. They are elected in open meeting, nomination and election, as in any other kind of open election.

Q. Now, in the Norfolk division, for example, there are employees in Suffolk and Currituck and other outlying points. How do those men elect their grievance committeemen?

A. The procedure of electing grievance men in Norfolk and other outlying points is for their own representative to call a meeting and hold an election for the purpose of electing men to the grievance committee.

3676 Q. Now, which voting section do you represent?

A. I represent the distribution and construction in Norfolk.

Q. How were you elected?

A. I was elected from the members of the I. O. E. by secret ballot.

Q. The members of the I. O. E. in what section?

A. In the distribution and construction.

Q. Did all of the members of the I. O. E. in the distribution and construction section employed by the Virginia Electric & Power Company elect you?

A. Most all of them.

Q. I mean, did all of the employees throughout the entire system or only the employees in the Norfolk division?

A. Only the employees in the Norfolk division.

Q. The employees in the Richmond division elected another representative.

A. They elected Mr. Staunton.

Mr. WHITE. Pardon me, Mr. Hilton, for leading.

Mr. HILTON. That is all right. It will save time.

Q. Now, Mr. Faust, are any members of any of the committees of the I. O. E. elected by any other than their fellow workers employed in the same line of work?

A. No, sir.

Q. You stated that the employees in the Norfolk division of the Virginia Electric & Power Company who are employed
3677 in the distribution and construction department elected you as a member of the electric division committee.

A. Yes.

Q. You also stated that you are a member of the general committee. Please state how you were elected to the general committee.

A. The members of the electric division committee from Norfolk elect one man to the general committee. I was elected from the electric division committee in Norfolk to the general committee.

Q. How do the members of the electric division committee in Norfolk vote when electing a representative to the general committee?

A. They vote one vote for each man they represent, or each person.

Q. Now, Mr. Faust, if the men that you represent in the distribution and construction voting section want to get rid of you, how can they do it?

A. By having a petition with 25 percent of them to sign it and call a meeting, and if 66⅔ of them vote for removal, I am to be removed from office, the office would be declared vacant, which would later be filled.

Q. Does removal from a division committee remove you from the general committee too?

A. That removes me from all committees.

3678 Q. Before we get off this subject of grievances, how is a grievance originated?

A. A grievance is originated by the member of the I. O. E. affected, and he makes it in writing, turns it in to his grievance committee.

Q. And then that grievance committee, I believe you testified, sees his immediate superior or whoever has been designated by

the management to handle grievances for that particular group, is that right?

A. Yes, sir.

Q. And if that is unsatisfactory, the grievance is then referred to the division committee?

A. Yes, sir.

Q. And they see, in Norfolk, Mr. Throckmorton and the head of the department affected?

A. Yes, sir.

Q. And in Richmond, Mr. M. C. Jones and the head of the department affected, is that right?

A. Yes, sir.

Q. What report does the grievance committee have to
3679 make of its activities?

A. The grievance committee makes a report to the division committee in writing.

Q. There has to be a complete file of every official grievance, then, in the files of the division committee?

A. Yes, sir.

Q. Now, what agency is the supreme body of the I. O. E.?

A. General committee.

Q. What powers does the general committee have?

3680 The WITNESS. The general committee has powers to bargain with the management of the Virginia Electric & Power Company in respect to wages, hours, working conditions, but in no way can execute an agreement without the approval of the division committee affected.

By Mr. WHITE:

Q. As I understand it, then, any agreement with the management involving transportation employees must first be approved by the transportation division committee.

A. That is right.

Q. And the same applies to any other of the four division committees?

3681 A. Yes, sir. The general committee has control over finances, elects a treasurer from the membership of the organization, who is bonded, and requires an annual audit by outside auditors the first of July of each year.

Q. Is the general committee required to report to the membership on its finances each year?

A. The general committee is required to give an account of the audit, yearly audit, to each member of the organization.

Q. Mr. Faust, what offices are maintained by the I. O. E.?

A. They have an office in Richmond at 401 East Franklin Street, consisting of a private office and an assembly hall.

Q. How large is that assembly hall?

A. A big assembly hall. It would hold 200 persons easy. In Norfolk we have an office at 205-206 Monticello Arcade. It is only one room, but we have a desk and an assembly hall with a seating capacity for 75 people.

3682 Q. Will you please describe what records the organization keeps?

A. The organization keeps all minutes of all meetings, all records of grievances and all records pertaining to anything that happens in the organization. All of the general committee, division committee, and interdepartmental committee minutes are kept and filed in Richmond and in Norfolk, and the minutes affecting only one part of the voting section—that is, the Richmond or Norfolk part of the voting section—are kept in the files in Norfolk or Richmond in which the voting section is, whichever the case may be.

Q. Who keeps the books showing the financial records of the association?

A. The Treasurer of the organization, duly elected by the organization.

Q. Mr. Faust, I believe you stated that the voting sections held regular meetings?

A. Yes.

Q. How often are meetings held by the voting sections?

A. My particular voting section holds meeting twice a month.

Q. Do you know how often the other voting sections in the Norfolk Division hold their meetings?

A. I am not positive. I think some parts of the Transportation Department hold them twice a month; but most of them are held once a month.

3683 Q. Where are those meetings held?

A. At No. 205 and No. 206 Monticello Arcade, our Association Office.

Q. Are similar voting section meetings held in Richmond?

A. Yes, sir; they are. They even have a schedule in Richmond up on the wall to show who meets.

Q. Who presides over these meetings of the voting section?

A. The representative of the voting section or someone duly elected as Chairman by the voting section for the purpose of presiding over those meetings.

Q. Each voting section has a secretary?

A. Yes.

Q. And he keeps minutes of those meetings?

A. Yes, sir.

Q. I believe you said you were elected to the general committee in July 1937?

A. Yes.

Q. Do you remember the date?

A. July 13, 1937.

Q. Was it July 12 or July 13th, Mr. Faust?

A. I was elected to the general committee on the 13th and I was elected to the division committee on the 12th.

Q. Since you have been elected to the general committee have you attended all of its meetings?

A. I have attended all of the meetings but one. We had
3684 one meeting in Richmond. Well, we really had two. As to the other one, I was called away on account of a death in the family. That was the only one that I missed.

Q. Have you attended all of the interdepartmental meetings in Norfolk?

A. I have attended every one of those meetings.

Q. And the meetings in your distribution voting section, have you attended those?

A. Yes, sir; I have attended every one of those, and also all of the meetings in the Electric Division Committee.

Q. At those meetings of the general committee, or the interdepartmental committee, or the electric division committee, and the general meetings of your voting section, has anyone in a supervisory capacity with the Virginia Electric and Power Company ever been present?

A. No, sir.

Q. Do you allow anyone to be present except members or persons connected with the organization?

A. I don't think anybody not connected with the organization has ever attended any of the meetings.

Q. Mr. Faust, you were the first representative elected to represent your voting section, were you not?

A. Yes.

Q. That was the first election held by the I. O. E.?

A. That was the first election held. I might say that
3685 there are duly elected representatives through the I. O. E.

Q. Mr. Faust, when in 1937 did you first hear of any activity regarding labor relations with the company here in Norfolk?

A. May 24, 1937.

Q. Please state what took place at that time?

A. We came into Cove Street at four o'clock and the foreman I worked with told us to go upstairs, that he could not go up. He said he didn't even know what kind of a meeting it was. We

went up there, and after we assembled up there Mr. Holik came up there and walked pretty nearly though the middle of the whole bunch. If I remember right, the way he started off was that he said he had been with them two or three years and had never lied to us and wasn't going to start now, or something to that effect. He told us first that they were going to hold a meeting in which the Wagner Labor Relations Act would be explained as much as it could be, at the main office building that night at eight o'clock, and for us to select someone to go down there and hear them, if they wanted to. He went on to say something about organization: "You are free-born and American citizens and some other stuff like that, whatever it was, and he said whatever kind of organization we were affiliated with he would try to cooperate with us in every way possible.

3686 And he asked if somebody would not let him have the names of the men as we came down the stairs. He started off and somebody, and if I am not mistaken it was P. D. Brown, called to him and said, "How many representatives must we get from the line department?" No; he said, "Can we get a representative from the line department and one from the cable department?" He said, "Yes; go ahead, if you want to." And he went on downstairs.

Q. Did you get the impression he told you how many representatives or delegates you could elect to go to that meeting?

A. If I remember right he didn't even mention the word "elect."

Q. Did he say anything about the number except a remark that he made to Mr. Brown in reply to any inquiry?

A. He didn't say anything about the number. He did say "Select whoever you want to go from the meter department, the line department," and I think he said, "The service department, and from Portsmouth."

Q. Approximately how many men were present at that meeting?

A. I wouldn't know about how many men were there. Practically everybody from the meter department and line department in Norfolk and Portsmouth.

Q. Do you think there were over 150?

A. There were over 150, all right.

3687 Q. What happened after Mr. Holik left the meeting.

A. After Mr. Holik left the meeting all of the men in the line department got together and they asked me if I would not go up there to hear it. About the time we were discussing it P. D. Brown walked over and said that the fellows from the cable department had asked him to go, and he said something about us going up there together. I don't remember

exactly what was said. But we came down the steps, all of us.

Q. Did you see Mr. Holik after that meeting?

A. Yes.

Q. Where?

A. He was standing down near the door of the garage. When I got near him Ohlinger was reading names off of a piece of paper of the fellows who had been elected up there. I might mention that Mr. Ohlinger went around to the various places and got the names of the men who were elected and wrote them down on a piece of paper.

Q. Do you know why Mr. Ohlinger was the one who did this?

A. I don't know why Ohlinger was the one who did this. He was over there in our crew and, naturally, he was a member of our department. He said it looked like someone ought to do it. He said Mr. Holik requested that it be done and nobody had been doing it, so he took Brown's name and my name down on a piece of paper and walked away. When I saw him next
3688 he was downstairs at the door of the garage. I don't know how many more names he had.

Q. What is Mr. Ohlinger's status with the company?

A. Trouble man down in North Carolina. He was formerly a first-class lineman and trouble shooter at Cove Street. He was transferred down there in August 1936.

3691 Q. Did you go down to hear Mr. Throckmorton?

A. Yes, sir.

Q. What happened when you got down there? How many people were there?

A. I wouldn't say how many there were there, exactly. It was a good-sized group. There were not a hundred people.

Q. Where was the meeting held?

A. On the sixth floor, V. E. & P. Building, Bush and Bute Streets.

Q. Who presided at this meeting?

A. Mr. Throckmorton.

Q. Do you remember what all he said?

A. Well, the first thing I remember him saying—I
3692 don't remember whether he was reading that or saying it, but he had this paper before him and he was talking about they had different petitions from somewhere and different verbal requests, and I think he said from five different departments of the company, and they didn't know how to handle them or couldn't handle them like that, or words to that effect. Then he read a paper which he said had been prepared by Mr. Holtzclaw that they intended for Mr. Holtzclaw to read down here Tuesday, May 25th, but that they decided to send the speech

down here so that the Norfolk and Richmond men would get it at the same time.

Q. I hand you Board's Exhibit No. 4 and I will ask you if that is the statement which Mr. Throckmorton read to you, Mr. Faust?

A. That looks like it.

Q. Did Mr. Throckmorton say anything after he had finished reading that statement?

A. I think he said he would be glad to answer any questions he could that anybody wanted to ask.

Q. Were there any questions asked?

A. Yes, sir. There were several questions asked.

Q. Do you remember what those questions were?

A. I remember one question was asked about how they would have to go about setting up a bargaining agency.

Q. Was that answered?

3693 A. No, sir; that wasn't answered.

Q. What was the procedure on questions which were not answered?

A. Mr. Throckmorton was standing up there with the paper in his hand and you would ask a question and he would turn to Mr. P. Norman Jones, and he would turn to M. C. Smith, and Mr. M. C. Smith would turn to Mr. Roman Miller, standing on the end of it, and he would say "I can't answer it."

Q. Do you remember any other questions that were not answered?

A. One question I remember was when somebody asked what was the company's attitude toward an organization, and Mr. Throckmorton answered that and he said the company's attitude was expressed in the paper he had read. And there was another question asked, something about meeting on company property. I forgot just what it was now, but it was never answered. Then there was some statement made about proof of an organization. They said they would have to have proof of it that whoever bargained with them was a bona fide representative of the majority of the group involved. Then somebody asked what kind of proof it would have to be, and he said "any kind, just so that it was proof it was bona fide." Then somebody asked should it be written or how it should be, and I don't think that was ever answered.

3694 Q. Was there anything said during that question-and-answer period which indicated to you that the company had any other idea in mind than the one expressed in Mr. Holtzclaw's statement?

A. Mr. Holtzclaw's statement was the only one made up there concerning organization.

Q. The other people never said anything outside of what was in the statement?

A. No, sir; except Mr. Roman Miller. He said he couldn't answer anything.

Q. Did you receive from what was said that night any idea or impression that the company definitely favored any particular line of action on the part of its employees with respect to labor organization or affiliation?

A. No, sir. The only thing he said was they were willing to cooperate with any organization.

Q. What happened after the question-and-answer period?

A. The four men standing up in front of the building or, I mean, in front of the audience, walked down the side of the seats over to the elevator and went on down. They told us they were going to retire, and we could do whatever we wanted to do up there.

Q. They left you?

A. They left us.

Q. What happened after they left you?

3695 A. Everybody stood up and started talking at one time.

Q. Were any ideas expressed at that time that you can remember?

A. After quite a little bit of argument a fellow named Keeter was sitting on the front seat, or he was standing up in front, and he turned around to the group and, as as well as I can remember, said "All of this argument is just argument, and the fellows up here don't even want an organization. So let's get out of here." Someone walked up to him and told him he didn't know who he was or what he was doing up there but that he had better be quiet with that kind of stuff, because we did want an organization. He was a bus driver and was in uniform that night. I know him when I see him.

Q. Then what happened?

A. I think Nicholson walked up to the front of the room.

Q. Where is Nicholson employed?

A. He is employed in the credit department in the office.

Q. Is he a member of the I. O. E.?

A. Yes.

3696 Q. All right. Go ahead.

A. He walked up there and he tried to call the meeting to order. By the time he got it to order, if I remember right, it was Mr. Tatem that got up and made a motion that we take the substance of that meeting back to the groups, it was at that time, and see what they wanted to do about it; whether they wanted to form an organization, or what kind of an organization they wanted to form, and to meet again on next Monday night;

but the next Monday night being a holiday, they decided to meet on Tuesday night, the night of June 1st.

Q. Was there any other action taken at that meeting?

A. Not that I remember.

Q. You stayed until it was over?

A. Yes.

Q. You referred to Mr. Tatem. What Mr. Tatem was that?

A. Mr. D. M. Tatem.

Q. Where is he employed?

A. He is employed at the Reeves Avenue power plant as switchboard operator.

3697 Q. After this meeting, what did you and Mr. Brown do?

A. Well, that night after that meeting Brown said something to me about getting them all together and explaining to them what had happened up there, and so I asked him if he couldn't do it some time the next day or the next night, because we had one line crew that was going to North Carolina on Wednesday morning and stay down there a week or so. So he told me the next morning he didn't know how we could get them together on Tuesday night, and if I would talk to the line crew and see what kind of an organization they wanted, see if they wanted an organization or what they wanted to do about it; so on Wednesday morning, the morning they went to North Carolina, I had seven pieces of paper, and I asked them to put their names as to what kind of an organization they wanted and what they wanted to do. On Wednesday afternoon we did have a meeting in the same place in the Cove Street garage and—

Q. At that meeting was anyone present who was in a supervisory capacity in the Virginia Electric & Power Company?

A. No, sir; I think all—I think everybody that was there at that time are members of the I. O. E., with the exception of Staunton.

Q. Please state what happened at that meeting.

3698 A. P. D. Brown sat up at the end, or at one side of the building, rather. All the group were out in front, and he made some statement about organizations, some independent organization, outside affiliation, and he made some remarks that we ought to elect a chairman and secretary. Then somebody nominated him for chairman, and somebody moved to close the nomination, or something like that. Anyhow, he was elected as chairman, and then they were going to elect a secretary. We had two departments up there, the distribution and the installation. Well, there were two of us nominated for secretary from the distribution department, and one for secretary from the

installation department. I was elected secretary, but I declined it. I said I felt like being there were two departments and seeing that the chairman was from the distribution department, the secretary ought to be from the installation department, but they still weren't satisfied to have that boy as secretary; and then they put the other nominee from the distribution department, and voted again, and the man from the distribution department, N. F. White, was elected as secretary.

Q. After you had elected your chairman and your secretary, what action was taken?

A. Mr. Brown, the chairman, called for a vote on what kind of an organization they wanted.

3699 Q. How was that vote taken?

A. It was taken on a piece of paper, one man from each crew was asked to get votes from his crew, and each man put on the piece of paper what kind of an organization he wanted, and he signed his name to it. All of those votes were collected. Then Mr. Brown asked was anybody in there who had not voted and wanted to vote. I don't think anybody said anything then. All the votes were collected and were brought up in a box where Brown was, and about four of us counted the votes.

Q. You were one of those four?

A. I was one of those four; yes, sir.

Q. Mr. Faust, I hand you a paper, apparently minutes of the meeting of the members of the Cove Street division of the Virginia Electric & Power Company, dated May 26, 1937, together with a list of names, and ask you if you know what that paper is.

A. I know this paper was signed—most of the names were put on there before we left the meeting that night.

Q. Now, read those minutes and see if they correctly report what took place.

A. As near as I can remember, this is just about what happened. After the votes were counted, Mr. Brown got up on a little box he had up there and counted the votes, and that is pretty near what he announced; it is close, anyway, I know. I don't remember the exact figures he did announce.

3700 Q. There seems to be an error there of a hundred.

A: Yes; it should be 153 that voted. It shows 253.

Mr. WHITE. Mr. Examiner, I offer in evidence a photostat of this, by agreement with counsel for the Board.

Mr. HILTON. Why not put in the original and then substitute that?

Mr. WHITE. All right. Mr. Examiner, I offer the paper in evidence and ask that it be marked "intervener's exhibit No. 3."

Trial Examiner FORT. Do you want to mark that one?

Mr. WHITE. No; I wish to substitute a photostatic copy for the original.

Mr. HILTON. I have no objection to that, but I do want to see the original.

Mr. WHITE. All right [handing document to Mr. Hilton].

Trial Examiner FORT. It will be received.

(The document above referred to was marked "intervener's exhibit No. 3" and received in evidence.)

By Mr. WHITE:

Q. According to your best recollection, then, 153 men participated in the voting?

A. Yes, sir.

Q. And the outcome was that 20 men voted for the C. I. O., six for outside help, 126 collective bargaining, and one voted for "just anything."

A. Yes; I might explain right here, though, that in the
3701 talk that Mr. Brown gave that day, the collective bargaining, as he described it, was an independent union. It is marked in as collective bargaining, but he described it as an independent organization.

Q. Therefore, when the men voted for collective bargaining, they voted for an unaffiliated independent organization?

A. Yes, sir.

Q. Now, these names that are signed to this petition were affixed, you said, mostly by men who were present at the meeting and immediately after the meeting?

A. Immediately after the meeting, that petition or the petition that was signed up there was carried close to the exit there from the garage, down the ramp, and while that petition was being signed, all the votes that were cast were burned on the concrete floor up there, and most everybody that attended that meeting that day signed that petition.

Q. Did any sign the petition who were not at the meeting?

A. I think that the last page was where Morris from Portsmouth carried it over to his group over there and got them to sign it over there and sent it back to N. F. White.

Q. And with the exception of that page, you think all the other signatures were put on there at the meeting?

A. I think so.

Q. I notice that this petition is signed by Mr. Judge, Mr. Harrell, and Mr. Blanchard, all of whom testified in this
3702 proceeding. Is that correct?

A. F. M. Blanchard, T. N. Harrell, Jr., J. L. Judge.

Q. Mr. Staunton testified on page 947 of the record: "Now, when the vote was counted we had 35 for outside affiliation, and they had about 50 for inside affiliation. So we surely must

3703 have a majority with 35." Is that a correct statement of what happened at that meeting?

A. No, sir; I remember distinctly how the three votes were—20 for the C. I. O., six for the A. F. of L., and one for anything, and all the other votes were for collective bargaining. I am not sure about the number.

Q. Were any men at that meeting from Portsmouth?

A. There are two line crews in Portsmouth. I think at that time there were eight men in one crew and five in the other. I don't know every individual man was there, but both crews were there.

3704 Q. And at page 948 of the record, Mr. Staunton testified that there were 21 men, 20 or 21 men, who were represented by one man from Portsmouth. Do you remember whether there was any one man at that meeting that represented 20 or 21 men from Portsmouth?

A. I remember that Morris said something about he was the only man from his department there, and they told him vote any way that Cove Street voted. Somebody—I don't remember just who—told him they didn't see how anybody could vote, to vote his own way. There were only about 14 or 15 men in his department over there, so he couldn't possibly have been voting for 21 men from his department over there. If they had been counting the line crew, there would have been more than 21, but there were not any at the meeting.

Q. Consequently, that statement is incorrect.

A. That one is. I don't think mine is.

Q. On page 1014 of the record, Mr. Davis testified as follows: "There was quite a bit of discussion on that. We took a vote for outside affiliation or for an independent union; but before we took the vote Mr. Brown explained what that was—I mean what the purpose was.

"Mr. Staunton asked Mr. Brown, he said, 'Mr. Brown,' he says, 'what is this to be, one of these company unions?'

"Mr. Brown says, 'No, this is not a company union; this
3705 is collective bargaining.'

"He says, 'But you know the company don't want you to join any outside affiliation. If you do, you are liable to make the company mad.'" Do you remember any such conversation between Mr. Staunton and Mr. Brown at that meeting?

A. I didn't hear it.

Q. You were there all the time?

A. I was there all the time; yes, sir.

Q. Were you supposed to be partly in charge of that meeting?

A. No; I wasn't supposed to be partly in charge, but I was up there pretty close to where the "charge" was.

Q. Pretty close to the head of the table?

A. Yes.

Q. Mr. Davis testified on page 1015 of the record: "At the time Mr. Morris, from Portsmouth, came in and said he had 21 votes and that he was instructed to put them in the way Cove Street went." Does you recollection agree with Mr. Davis' as to the 21 votes Mr. Morris had?

A. No, sir; I can't agree with him on the 21.

3708 Q. Mr. Faust, referring to intervener's exhibit 3, and the last sheet attached to it, please state whose name is the first name signed on that sheet.

A. W. O. Morris.

Q. Did you see Mr. Morris sign his name to that particular paper?

A. Yes, sir.

Q. Are you familiar with his signature?

A. I would not be familiar enough with his signature to identify it, but I know that he signed his name to a piece of paper up there. I better change that. I would not say that is the piece of paper, but I did see him sign a piece of paper up there.

Q. Did you see Mr. Morris when he brought back a piece of paper with the names of other people signed to it?

A. I saw the paper after he brought it back. I did not see him actually bring it back.

Q. You say you saw the paper after he brought it back?

A. After he brought it back.

Q. Is that the paper he brought back [showing a paper to the witness]?

A. Yes, sir, that is the paper he brought back.

Mr. WHITE. I think we should have these papers marked separately as A, B, C, and so forth.

3709 Trial Examiner FORT. Suppose we mark them now, Mr. Reporter.

(The documents previously marked collectively as intervener's exhibit No. 3 were thereupon marked "intervener's exhibits 3-A to 3-G" inclusive.)

Trial Examiner FORT. Make a note that the page referred to by Mr. White and Mr. Faust was 3-G in the testimony just preceding this.

By Mr. WHITE:

Q. Mr. Faust, the minutes and petition was one of the papers which the organization turned over to the National Labor Relations Board at its request, was it not?

A. Yes, sir; I gave that paper to Mr. Spencer myself on the 25th of April.

Q. Mr. Faust, Mr. Davis testified, at page 1045 of the record, that Mr. Brown said: "Well, fellows, this is the last time that the company will furnish us a place to meet and will also be the last time that we will be paid for our time in connection with this organization." Do you remember any statement like that being made by Mr. Brown at the meeting?

A. I remember he made a statement that this was the last time we could meet on company property. He did not say it would be furnished. He said this is the last time we could meet on company property if we form an organization, and since we were forming an organization we could not meet on company
3710 property.

Q. Is that all he said along that line?

A. That is all I remember.

Q. You do not recall him saying anything about being paid for the time?

A. No, sir; I do not recall that.

Q. When was the next meeting of employees of the Virginia Electric & Power Company that you attended?

A. You mean of the distribution section?

Q. Yes; of the distribution section, of that group.

A. The next meeting I attended was July the 13th, 1937.

Q. Prior to that time had you attended any of the meetings of committees?

A. Yes, sir; on the night of June the 3rd I attended a meeting on the sixth floor of the V. E. P. Building.

Q. Do you recall, Mr. Faust, who was there at that meeting?

A. Well, it was somewhat the same group at that meeting as there was on Monday night, May 24th, with the exception of the officials who made the statement up there.

Q. Mr. Faust, I hand you a paper dated June 1, 1937, and ask you to state what it is.

A. That is the minutes of the meeting I attended on the 1st of June 1937.

Q. Does it correctly record what your recollection is of what took place at that meeting?

3711 A. As far as it goes, yes, sir.

Mr. White. I ask to file this in evidence as intervener's exhibit No. 4.

Trial Examiner Fort. It will be received.

(The document above referred to was marked "intervener's exhibit No. 4" and received in evidence.)

By Mr. White:

Q. You said, Mr. Faust, that the minutes of the meeting are correct as far as they go. Do you recall the talk that Mr. Elliott gave?

A. Yes. I recall the talk he gave, and I recall that he read a portion, if not all, of the constitution that he had had drawn up. He called the organization by the name of Employees' Association of Committees, and he drew a sketch of it on the blackboard. Up on the stage up there he had a blackboard, about the size of that picture up there, if I remember right. He put a big ring at the top with a lot of little rings coming down. The big ring was at the top.

3712 Mr. WHITE. He indicated that picture. For the record, would that be ten by four?

Trial Examiner FORT. Six by four.

Mr. MOORE. Six by four feet.

Trial Examiner FORT. Yes.

By Mr. WHITE:

Q. All right. Go ahead.

A. Then a lot of questions were asked in regard to that big circle in particular.

Q. What was that big circle supposed to be, according to your recollection?

A. The big circle was supposed to be the big shot of the organization. He was supposed to direct the whole organization, have power to put any member out of the organization, for some reason—I do not remember now just what the reasons were—and he was supposed to get a salary, and the only way you could get him out was by due process of law.

There was a lot of questions asked about that. Someone asked what his salary was supposed to be. He said he had not decided on that yet.

3713 Q. What was the attitude of those present at the meeting towards Mr. Elliott's constitution and bylaws?

A. Some of them were in favor of it.

Q. Do you remember from what department they were?

A. I think it was mostly from the transportation department. The only man who said that he was very much in favor of it was Mr. Reutt. And it seems as though most of the transportation employees were sitting on one side of the aisle and the electric and gas employees were on the other side of the aisle.

Then several more questions were asked. They wanted to know what the due process of law was. He said something about impeachment proceedings. I don't remember exactly what he said, but I do remember the words "impeachment proceedings."

Then Mr. Reutt got up and said something about adopting the constitution.

I think Mr. Tatem again got up and said something about it. He said he felt he would have to take it back to the men in

his section before he could act with any authority to adopt
3714 it.

Mr. Morris, from Portsmouth, got up and made practically the same statement. And then he and Mr. Reutt got into an argument. Mr. Reutt told Mr. Morris he was nothing but a messenger boy; that he did not have any authority; that he ought to have authority when he comes up as a representative of the men.

And then Mr. McHorney got up and said something about he knew his men would not approve of it with one man at the top of it with so much power.

And then Tatem got up and suggested that copies of the constitution be printed, and Mr. Elliott said he thought he could have them by Thursday afternoon and have one copy for each man up there.

And Mr. Diggs, the secretary, took the names of each man that was up there that night and said they were going to get the constitution to them.

Q. Have you ever seen that constitution since?

A. No, sir; I never have.

Q. Did you take Mr. Elliott's copy of the constitution?

A. No, sir.

Q. Did you see anybody else take it?

A. No, sir.

3715 Q. After the meeting of June 1st which you have related, what was the next activity on the party of the employees of the Virginia Electric and Power Company that you know about?

A. Two days later, if I remember right, on the third of June, I came in from work one afternoon and P. D. Brown was dressed and said that he was going to Petersburg; that Mr. Tatem had called him, and that he was going over to Petersburg that night. He and Morris and Tatem, I believe he said, were going over to Petersburg.

Q. Did he tell you why he was going?

A. He said he had gotten into touch with someone from Richmond and that some of the men from Norfolk were going to meet with some of the men from Richmond to see what they could do about forming an organization.

Q. Did you discuss anything about that with Mr. Brown that night before he left?

A. The only thing I remember discussing with him that night, I had been to a lawyer here in town and got a couple of copies of the Wagner Labor Act, and I got them that morning, and was going to give them to him the day before, but I didn't see him. He and I were trying to read it to make out what was in it. We took it to Cove Street to Charlie Adams, the Justice

of the Peace, to get him to explain something in there to us; but he didn't know anything more about it than we did.

Q. He is not in a supervisory position with the Virginia Electric and Power Company?

3716 A. No, sir.

Q. Did you get any report from Mr. Brown as to what he did after that?

A. The next day, or the second day after—I wouldn't say whether it was one day or two days after, but I believe it was the next day—Brown and R. D. Allison and F. R. Allison and Mr. Morris got together out there by the Cove Street Plant and were talking about what had happened at the Petersburg meeting.

Q. Who was R. D. Allison?

A. Mr. R. D. Allison was a man who was originally selected to go to hear Mr. Throckmorton that night from the installation department.

Q. Who was Mr. Morris?

A. Mr. Morris was a man originally selected to go from the Portsmouth Electric Department.

Q. And who is F. R. Allison?

A. F. R. Allison was the man originally selected to go from the meter testing department.

Q. So you were all the representatives and all of you had gone to hear Mr. Throckmorton's speech?

A. Yes; with the exception of N. F. White, and he was

3717 the man elected secretary on the 26th.

3718 A. The next meeting I attended I went to the Navy Y. M. C. A. in company with W. O. Morris. He was a member of the steering committee but I was not. I just went with him just to be going up there. We met in the dining room of the Navy Y. M. C. A.

Q. Did that have any connection with the Virginia Electric and Power Company?

A. No, sir; I don't think so.

By Trial Examiner Fort:

Q. Will you give us the date of that?

A. June 16th.

3721 Mr. White. Mr. Examiner, at this time I would like to introduce and have marked for identification the following:

As Intervener's exhibit No. 5, the minutes of a meeting of June 7, 1937.

As intervener's exhibit No. 6, the minutes of the meeting of June 11, 1937.

As Intervener's exhibit No. 7, the minutes of the meeting of June 16, 1937.

By Mr. WHITE:

Q. Mr. Faust, I believe you say that you did attend the meeting at the Navy Y. M. C. A., on June 16, 1937, did you not?

A. Yes.

Q. Do you recall who was present at that meeting?

A. I don't recall all of them. I can name some of them.

Q. Will you please name those that you can remember?

3722 A. Mr. Tatem, P. D. Brown, R. D. Allison, C. McHorney, L. H. Walsh, W. O. Morris. Those are all that I can think of right now—and myself.

Q. Do you remember Mr. Elliot being there?

A. I remember Mr. Elliott came in after I was there.

Q. What do you remember as to what Mr. Elliott told that meeting on June 16, 1937?

A. The best I can remember, Mr. White, he came in and said that the bus drivers had decided that they would come in with the organization, that that committee was trying to form, and he asked permission to make a statement to the paper. And he made the statement then that he was going to ask permission to make to the paper.

3723 If I remember rightly, somebody was opposed to it at first. Then we had quite a discussion on it, and Mr. Tatem called a vote on it as to whether or not he should be allowed to put that statement into the paper. And Mr. Tatem made the statement then that that committee had tried to follow the policy of no publicity in the newspaper.

Q. What was finally done about it?

A. He was allowed by the committee to go and make that statement to the newspaper.

Q. Do you recall who presided over the meeting of June first at the V. E. & P. Company Building?

A. Mr. Nicholson.

Q. Who presided over the meeting at the Navy Y. M. C. A. on June 16th?

A. Mr. Tatem.

Q. Do you recall who acted as Secretary for both of those meetings?

A. Mr. Diggs.

Q. Was there anything further discussed at the June 16th meeting that you now recall?

A. They said the night before they had been to Richmond and the constitution of the I. O. E. had been adopted up there by the members of the Richmond division and that it was going to be

brought down here. And somebody, and I think it was P. D.
Brown, got up there and tried to draw a chart on
3724 the blackboard similar to the one introduced in evidence.
He couldn't remember just how it went, and someone got up and tried to help him out. And finally there was nobody who ever got it up there.

They said they would have a copy of the constitution down here in two or three days, or would have some copies of the constitution.

They also said they had adopted a form of membership card and they were going to get those cards down here as soon as they possibly could.

And Mr. Tatem stressed the fact that those cards should not be signed on company property or on company time, and that 25 cents should be collected with each card.

Q. Did you find out at that meeting what had happened in the interval between the meeting on June 4th, when you and Brown and Allison and the other committeemen talked, and June 16th?

A. No, sir. I didn't find out at that meeting, but I had talked to Brown in the meantime and I had a pretty good story of what happened.

Q. You had been informed by Brown previously as to what steps had been taken?

A. Yes.

Q. What steps had been taken?

A. They had one meeting. The entire transportation
3725 department wouldn't vote on something. I have forgotten
just how it was, but it was the same meeting Mr. Tatem was made permanent chairman of the steering committee that Mr. Nicholson was removed as temporary chairman. And the transportation department decided they would form their own organization.

Q. Did you know that a constitution and bylaws had been submitted for approval to certain members of the committee?

A. Yes, sir. They were talking about it up there that night and tried to draw it on the blackboard, but nobody could draw just exactly, or could remember just exactly how the chart should be drawn.

Q. Had you heard anything about a meeting in Richmond previous to this meeting of June 16th?

A. Yes. Mr. Morris told me about the meeting in Richmond. That is why I visited the meeting at the Navy Y. M. C. A.

Q. I hand you intervener's exhibit No. 7, the minutes of June 16th meeting, and I will ask you if they correctly report, according to your recollection, what took place there, Mr. Faust.

A. It seems to be something like this. Mr. Tatem made the statement about the cards not being signed on company property. And then it says 25 cents for registration will be collected with each card, but it doesn't say what for.

3726 Q. So far as what is recorded there, is that correct?

A. Yes, sir: as far as I can remember.

Q. In other words, the only change you would make in the minutes is that they do not include Mr. Tatem's reference to not signing cards on company property and the fact that registration cards would be available?

A. Yes, sir.

Mr. WHITE. I ask that Intervener's Exhibit No. 7 be received in evidence.

Trial Examiner FORT. It will be received at this time.

(The document referred to was marked "Intervener's Exhibit No. 7" and was received in evidence.)

By Mr. WHITE:

Q. At that meeting a committee was appointed composed of Mr. Walsh and Mr. McHorney to arrange for a meeting at the Blair Junior High School: is that correct?

A. Yes, sir.

Q. Was that meeting held?

A. Yes, sir.

Q. When?

A. June 22, 1937.

Q. Did you attend that meeting?

A. Yes, sir.

Q. I hand you Intervener's Exhibit No. 8, and ask you if those minutes correctly record the proceedings at that meeting?

A. That is correct as near as I can remember.

3727 Mr. WHITE. I ask that the minutes be received in evidence as Intervener's Exhibit No. 8.

Trial Examiner FORT. If there is no objection, they may be received.

(The document referred to was marked "Intervener's Exhibit No. 8" and was received in evidence.)

By Mr. WHITE:

Q. At that meeting, Mr. Faust, do you remember whether any request was made that any foremen or other persons in a supervisory capacity should leave the room?

A. Yes, sir: I remember Mr. Tatem walked out on the stage from where he was sitting and requested any foremen or supervisors or persons of a similar grade who were present to please leave the room.

3728 Q. Do you remember whether the constitution and bylaws were read at that meeting?

A. They were read; yes, sir.

Q. Were the bylaws read?

A. Yes, sir.

Q. Do you recall what was said, if anything, about the bylaws?

A. I remember one question I asked, myself.

Q. What is that?

A. About the election. Being as the constitution called for the election to be held on the first Monday in July, if it was not a holiday, and the first Monday was a holiday, I asked them why we had to wait until the second Monday in July for an election.

Q. You are confident that the bylaws, as well as the constitution, were read?

A. Yes, sir, because they even brought out the fact about the envelopes, as to the way the ballots were supposed to be handled and the way the election was supposed to be held by the steering committee.

Q. Do you recall Mr. Elliott's address at that meeting?

A. Yes, sir.

Q. Do you recall whether he said anything about being offered a job?

3729 A. He said something about being offered a job on two different occasions. I don't remember just exactly what he said about it, but he did say he had been offered a job on two different occasions.

Q. Suppose you tell us, just as near as you can recollect, what took place from the time Mr. Elliott got up, until his address was over.

A. Mr. Elliott walked up there and asked Mr. Tatem's permission to speak, and Mr. Tatem gave him permission to speak. He came up to the stage and walked over to you, and shook hands with you, and he said, "While I shake hands now, Mr. White, you may not want to shake hands with me after I am through." He said, "I am sorry for you, but you are doing something you will never get paid for." Then he made his speech.

Q. Did he state then that he expected to join the C. I. O. if anybody offered him a card?

A. Yes, sir. That was practically the last thing he said before he got off the stage.

Q. After Mr. Elliott left the stage, what happened?

A. Then Mr. Reutt got up, and in a very angry tone of voice, it sounded to me like, denounced Mr. Elliott and his statements. He even called on Mr. Hough, sitting in the audience, to back

him up in some of his statements that Elliott had sneaked off and went to Richmond and left him.

3730 Q. Did he refer to the fact that only a short time before this Elliott was supposed to go to Richmond with Mr. Hough, and that he left Mr. Hough at home, and went by himself?

A. That is what he was bringing out when he asked Mr. Hough in the audience if Elliott didn't sneak out and leave him, or was making the statement that he did.

3731 Q. Was there any further discussion that night, that you recall, other than what is stated in the minutes here?

A. Yes, sir. A little boy, 5 feet 6 inches tall, got up back in the audience and spoke in a loud tone of voice, that as far as his department was concerned, they didn't want any C. I. O. or anything else, and that they wanted just what was read out up there on the stage, that they didn't come there looking for the C. I. O. and they weren't going away with it.

Q. Was there any vote taken up there?

A. No, sir.

Q. Did anybody suggest a vote up there?

A. No, sir.

Q. Was the meeting called for the purpose of polling a vote on anything?

A. The only purpose in calling the meeting was that it was a mass meeting of the employees to hear the constitution and bylaws read.

Q. Prior to the meeting of June 22nd, Mr. Faust, had any of the membership cards which were referred to in the meeting of June 16th come into Norfolk?

A. Yes, sir.

Q. Did you have any of those cards?

A. Yes, sir.

Q. From whom did you get them?

A. P. D. Brown.

3732 Q. At that time did you begin signing up any of the employees of the Virginia Electric & Power Company as members of the I. O. E.?

A. Yes, sir; I signed some cards the very afternoon we got them, on the 18th of June; I presented them to the fellows, and they signed them.

Q. Do you know whom you signed up?

A. I don't remember exactly whom I did sign up. There wasn't very much, and N. F. White also had some cards, and as they would sign for him and pay him the quarter he would

turn the card and quarter to me, and I think it was 19 that White and myself both signed. P. D. Brown signed the rest of them.

Q. Did you sign any of those men on company property?

A. I didn't sign any of them on company property; no, sir.

Q. Did you sign any of those men during working hours?

A. No, sir.

Q. Did you make a memorandum of those men that were signed by you and Mr. White?

A. I made a memorandum, in effect, of the quarters that were turned in to me. Each man that turned in his card and a quarter, I made a memorandum of it.

Q. What kind of a paper did you make that memorandum on?

A. On a post card with a picture of the Knights of Pythias Charity Lodge No. 10 on it.

Q. When did you make that memorandum?

3733 A. I made it as I collected the quarters.

Q. I hand you a postcard, showing Pythian Castle Hall, erected by charity, Lodge No. 10, on the reverse side of which is a list of names, and I ask you if that is the memorandum you made at the time you signed up the employees of the Virginia Electric & Power Company.

A. Yes, sir; that is the memorandum I made, as I entered these quarters and put the names down.

Q. What is the significance of the check mark which is made by each of the 19 men and a cross mark on some of the others?

A. I don't know what the cross mark is for. I remember what the check mark is for.

Q. What is the check mark for?

A. The check mark was put by each man's name as the quarter was turned over to me by P. D. Brown—the quarter and the card. I cannot remember what the cross marks were put there for.

Mr. WHITE. Mr. Examiner, I offer this post card in evidence as intervener's exhibit No. 11.

Trial Examiner FORT. It will be received.

(The document above referred to was marked "intervener's exhibit No. 11" and received in evidence.)

By Mr. WHITE:

Q. Mr. Faust, I hand you this intervener's exhibit No. 11, and ask you if you find on there the names of

3734 Frank Darden and Henry White.

A. Yes, sir.

Q. Does that mean that you or Mr. N. F. White signed up Frank Darden and Henry White?

A. Yes, sir.

Q. So Mr. Judge, who testified that Mr. P. D. Brown signed these men up on company property in his presence, must have been mistaken about those two men?

A. He must have been.

Q. You deny that Mr. Paul Brown signed up Darden and White?

A. I deny that Paul Brown signed any of the men whose name is on that card.

3735 Q. When was the next meeting that you attended after June 28, 1937?

A. The next meeting after June 28th?

Q. Yes.

A. Do you mean the committees or the sections?

Q. Of the committees.

A. The night of July 13, 1937, if I remember right.

Q. Prior to that time what action had been taken by the I. O. E.?

A. Nominations and elections had been held, and I had
3736 been on the 12th of July elected as representative from the distribution construction section.

Q. How were those nominations and elections held?

3737 A. They were given a blank—we placed two names on it, and instructions on the ballot were to nominate any two men in your section you wanted to. You put it in a plain envelope, sealed it, and then put it in an envelope with a place to put your name, print and write it, and despoit it in a sealed box sitting on the curbing down at Cove Street.

Q. Mr. Faust, I hand you a paper and ask you to state what it is.

A. This is a nomination ballot.

Q. Is that the form of nomination ballot used in the election of the I. O. E., which was held on July 2, 1937?

A. Yes, sir. I am not sure about the date, but that is the form that we had along about the second day of July.

Mr. HILTON. About what date was that?

Mr. WHITE. July 2, 1937. Mr. Examiner, I ask to have this identified as Intervener's Exhibit No. 12, and received in evidence.

Trial Examiner FORT. It will be received.

(The document referred to was marked "Intervener's Exhibit No. 12" and received in evidence.)

By Mr. WHITE:

Q. I now hand you another paper, Mr. Faust, and ask you to state what that is.

A. This is the election ballot that was used last July 12th. The nomination ballots were counted, and the two highest
3738 men on the nomination ballot in the section were the nominees, and the two names are supposed to have been put on there, each man voting for the man he wanted to be elected as representative.

Mr. WHITE. Mr. Examiner, I ask that this be identified as Intervener's Exhibit No. 13, and be received in evidence.

Trial Examiner FORT. It will be received.

(The document referred to was marked "Intervener's Exhibit No. 13" and was received in evidence.)

By Mr. WHITE:

Q. Mr. Faust, I hand you an envelope, and ask you to state what that is.

A. This envelope is supposed to be the outside envelope. As a person put his voting division in the section, they write their name and print it on here.

Q. Then, how was the election conducted? Take, for example, the nomination ballot, Intervener's Exhibit No. 12. How would a member of the I. O. E. cast his ballot when he came up to vote?

A. Do you mean after he had his seal or before?

Q. No; before. He is handed a blank ballot, as I understand it. Just proceed from there and describe the procedure from that point on.

A. He is handed a blank ballot, and he has the privilege of writing two names on here for two nominees from his section.

Q. Then what does he do with it?

A. He puts it in a plain envelope and seals it up.

3739 Q. And what does he do with that plain envelope?

A. He puts it in an envelope similar to this one, and seals that one, and then he writes this on here and drops it into a sealed box.

Q. That is the procedure prescribed by the bylaws of the I. O. E.; is it?

A. Yes, sir.

Mr. WHITE: I do not believe I have had that envelope admitted in evidence. Mr. Examiner, I ask that this ballot envelope be identified as Intervener's Exhibit No. 14 and received in evidence.

Trial Examiner FORT. It will be received.

(The document referred to was marked "Intervener's Exhibit No. 14" and was received in evidence.)

By Mr. WHITE:

Q. Now, how was the election conducted?

A. There were three inspectors of election appointed. They have a ballot box sealed, with a small slot cut into it, big enough to put one of those envelopes in.

Q. And when an employee brings in his envelope, what does he do?

A. He just drops it in that box, in the presence of the inspectors of election.

Q. Do the inspectors of election check the employee's name to see whether he is entitled to vote, before he is given a ballot?

3740 A. No, sir.

Q. When is the check made?

A. The check is made after the ballots are taken out of the ballot box; they are checked by a list of the members against the names on those envelopes.

Q. Did you assist in the nomination and election held on July 2 for voting?

A. Yes, sir; in my voting section.

Q. Were inspectors of election appointed for all voting sections, just as they were for yours?

A. So far as I know; yes, sir. That was the instruction.

Q. Now, in your particular voting section, when you came to count the ballots, did you count the nomination votes?

A. I helped count them; yes, sir.

Q. What is the procedure that was followed?

A. The first thing we did was to check the list of the men that were signed up. At that time, we didn't have all the men signed up, and we checked the members by the cards on there, and by the names on the envelope, and after we checked them, we would open them and put all the outside envelopes in a bundle together, and took the plain envelopes and shuffled them all up.

Q. Would it be possible for the inspector of election to know how any man voted in that election?

A. No, sir.

Q. Then, did you count the ballots?

3741 A. We counted the ballots; then after these outside ballots were taken off the table, the others were shuffled up, and we opened the plain envelope, and counted the nominees from the nomination ballots.

Q. Who were the nominees in your section?

A. B. E. Knight and W. W. Faust.

Q. Were there any other nominees besides you two?

A. Yes, sir. There was about 10 or 11 more, if I remember right. That is the approximate number, anyway.

3742 Q. Do you recall approximately how many ballots were cast in that nomination election?

A. I think about 62.

Q. After that was done what was the next procedure?

A. The next procedure was to notify everybody who the two nominees were and that an election would be held on the 12th of July in the same manner as the nomination election was held.

Q. Were you allowed to act as an election inspector at that election?

A. No, sir.

Q. Why not?

A. Because I was nominated for representative.

Q. The bylaws provide that you cannot act as an election inspector if you are a nominee?

A. Yes, sir.

Q. And in your case the bylaws were observed?

A. Yes, sir.

Q. What was the outcome of that election?

A. I was elected as representative of the distribution and construction.

Q. Do you know how many men voted in that election?

A. Sixty-eight, I think.

Q. How many men are in your voting section?

A. We do not have as many now as we had at that
3743 time. We had about 110 at that time.

Q. You mean you had 110 men employed at that time who were eligible to be members?

A. Yes, sir. We did not have that many members at that time.

Q. And 68 men actually participated in the voting?

A. Yes.

Q. Were any ballots thrown out?

A. I do not know about the election ballots, but there were some thrown out of the nomination ballots. I did not check the election ballots myself.

Q. And so this meeting on July 13 that you attended was the day after the election ballots had been cast and you had been elected representative for the distribution and construction voting section, is that right?

A. Yes, sir.

Q. I hand you minutes of the meeting of July 13th and ask you if they correctly report what transpired at the meeting.

A. Yes, sir.

Mr. WHITE. Mr. Examiner, I move that intervener's exhibit No. 10 be received in evidence.

Trial Examiner FORT. It may be received.

(Thereupon the document previously marked for identification as "intervener's exhibit No. 10" was received in evidence.)

3744 By Mr. WHITE:

Q. At that meeting you perfected your organization of division committees and elected representatives of the general committee, did you?

A. Yes, sir; and dissolved the steering committee.

Q. So, as a matter of fact, the I. O. E. began to function first on July 13, 1937, in Norfolk under its duly elected representatives, is that right?

A. Yes, sir.

Q. I believe that you stated that you also attended a meeting of the distribution and construction voting section on July 13, 1937; is that correct?

A. Yes, sir; that was held at 5 o'clock, I think, in the afternoon at the parking lot beside the Cove Street garage.

Q. Mr. White, I hand you minutes of a meeting of the distribution and construction sections dated July 13, 1937, and ask you if those correctly report what happened at that meeting.

A. As near as I can remember, that is what happened.

Mr. WHITE. Mr. Examiner, I ask that this paper be marked as intervener's exhibit No. 15 and received in evidence.

Trial Examiner FORT. It may be received.

(The document above referred to was marked "intervener's exhibit No. 15" and received in evidence.)

By Mr. WHITE:

Q. Mr. Faust, this meeting has been referred to as being held on a parking lot here, has it?

A. Yes, sir.

3745 Q. Mr. Latham attended that meeting, did he?

A. He was there, yes.

Q. Did the majority of the members of the distribution and construction voting section attend that meeting?

A. I would think so; yes. There was a pretty good crowd up there.

Q. I notice that you formulated certain demands, according to those minutes. Were they voted on by those present?

A. Yes, sir.

Q. Who kept the minutes of this meeting?

A. I kept an account of the meeting on a piece of paper which I had in my hand.

Q. You took down the minutes yourself?

A. Yes, sir.

Q. And you wrote out the minutes yourself?

A. Yes, sir.

Q. And they are signed by you as acting secretary?

A. Yes, sir.

Q. Now, this meeting was held prior to the meeting at the Monticello Arcade, as I understand it?

A. Yes, sir.

Q. Mr Faust, going back to those elections: Where were those elections held?

A. In front of the Cove Street building on the curb.

Q. On company property?

3746 A. Well, I would not call it company property. It is about 12 feet from the building on the curbing, 12, maybe 15 feet; I do not know just how wide the sidewalk is, but it is the distance of the sidewalk from the building.

Q. Was the ballot box ever carried inside the Cove Street building there for the purpose of having ballots deposited in it?

A. In the nomination election it certainly was not. I was not an inspector at the election.

Q. Did you ever hear in the election that the ballot box was kept anywhere except out on the curb?

A. No, sir; not until this hearing started.

Q. Was that election held during working hours? I mean, did men vote during working hours?

A. No, sir. The box was out on the street at 7:15 in the morning, I guess, and I think we stayed there until 5 o'clock that afternoon. We get off at 4:30. There were no ballots cast during working hours.

3752 Q. Mr. Faust, as you testified on Friday, you attended a meeting of the Norfolk steering committee at the Navy "Y" on June 16, 1937, at which Mr. Elliott appeared. Is that correct?

A. Yes, sir.

Q. I believe you further testified that Mr. Elliott made a statement to the steering committee that the transportation employees in Norfolk, particularly the bus and rail employees, wanted to come into the I. O. E.: is that right?

A. I don't remember that he said anything about the rail employees. He said the bus employees. He said that the bus employees had decided that they would come in with us as a group.

Q. Were you at that meeting the entire time Mr. Elliott was there?

A. Yes, sir. I was there when he came in; I was there when he left the first time; I was there when he came back; and I stayed until the meeting was over.

3753 Q. On page 568 of the record, Mr. Elliott testified with reference to that meeting, as follows—and I am quoting here:

"Q. Mr. Elliott, what did you tell that meeting at the Navy 'Y' about the attitude of the transportation department employees?

"A. I told the Steering Committee—was that what you asked about?

"Q. Yes.

"A. I told the Steering Committee, if I recall, just exactly, that Mr. Bishop had been very active in trying to get me to switch over to the system-wide union and that it looked like a hopeless job for us to try to keep the Independent Transportation Workers Union going." Mr. Faust, did you hear Mr. Elliott make such a statement?

A. When you read it was the first time I ever heard any words like that.

Q. You are positive that Mr. Elliott did not make such a

3754 statement to the Steering Committee that night?

A. I am positive; yes, sir.

Q. Now, I believe, Mr. Faust, that we had gotten through the meeting of July 13th, both of the Steering Committee and of the Distribution Construction Committee, and just as we closed on Friday you testified that the next meeting you attended was at the Nansemond Hotel on July 17th and 18th, 1937, and ask you if those are the minutes of the meeting of the general committee of the organization held in the Nansemond Hotel on July 17th and 18th, 1937 (handing a document to the witness)?

A. There is only one exception that I would make to these minutes.

Q. What is that exception?

A. That is the name of Mr. Diggs being on the general committee. He was only there in Mr. Shelton Woodard's place, who was on vacation at the time.

Q. He was not actually a member of the general committee?

A. No, sir.

Mr. HILTON. That is the Mr. Diggs referred to on page 2, paragraph 2, of this exhibit; is that right?

The WITNESS. Yes; the last name.

By Mr. WHITE:

Q. With that exception, the minutes that you see there correctly record what transpired at that meeting?

3755 A. Yes, sir.

Mr. WHITE. Mr. Examiner, I ask that this paper be received in evidence, and identified as Intervener's Exhibit 16-A, B, and C.

Trial Examiner FORT. There being no objection, it will be admitted.

(The documents referred to were marked "Intervener's Exhibits 16-A, B, and C" and were received in evidence.)

By Mr. WHITE:

Q. Mr. Faust, in addition to the general committee meetings which were held at the Nansemond Hotel, what other meetings were held there during that period from the morning of July 17th to the evening of July 18th?

A. We had joint interdepartmental meetings, at which all the representatives were together. Then, we had division committee meetings, electric, and transportation, accounting and sales and gas, and then in addition to that, each division broke up into their voting sections; that is, the power plant men together, the line department men together, to try to draw up provisions for our contract—proposed contract.

Q. According to your recollection, was Mr. Woodard the only duly elected representative who was absent from that meeting?

A. He was the only one that I remember being absent.

Q. What was the main object of the meeting at the Nanse-
3756 mond Hotel, other than the completion of the organization of the I. O. E.?

A. To draw up a proposed contract and get ready to present it to the company for bargaining.

Q. Did the representatives come to that meeting with any instructions from their respective voting sections?

A. All of the representatives were supposed to have had instructions from the voting sections, and I think they all did.

Q. Now, you testified on Friday that the voting sections in Richmond and the voting sections in Norfolk—and I am referring to the Richmond division and the Norfolk division, rather than to the two cities—each elected one man to their division committees. I think that is correct, is it not?

A. Yes, sir.

Q. In regard to the Nansemond Hotel, how did you function with respect to, say, your voting section, the distribution construction voting section?

A. In my section, I got together with Mr. Staunton, the representative of the same department in Richmond, and in addition to that they had a man by the name of Vaiden. I think he came of his own accord from Williamsburg, from the distribution de-

partment. In addition to that, they had a letter submitted by members of the line department from Petersburg, and we all
3757 tried to get together as near as we could on what we thought would satisfy each division or each department of the distribution department.

Q. After you had those meetings, what did you do with the request? Did you get together and make a consolidated request, or did you submit a separate request?

A. We in the distribution department submitted a separate request. After we got together in our department, then we got the electric division, to work as many things in for the electric division of the whole department we could, believing that after that we could call in the joint interdepartmental and try to get in all the provisions together as near as we could.

Q. You tried to get at all those things which every voting section asked for in order to incorporate those things into a general provision to go into the contract; is that right?

A. Yes, sir.

Q. And the other things were left to be handled separately?

A. Yes, sir.

Q. When you came into the electric division, was there any difference of opinion as to what should go into the contract?

A. Yes, sir; there were 10 members of the electric division committee and the members of the distribution section had not given any thought to a closed shop. The other eight members were very much in favor of a closed shop. So we had quite an argu-
3758 ment about it, and we finally put it to a vote, and two of us voted it down by eight to two, and even after that, we were not quite familiar with the constitution as we are at the present time, and two members of the distribution department, feeling that they represented more men than any other two, or even two or three, we tried to find out if we could not have one vote for each person represented. We found, according to the constitution, we voted one vote per person; I mean, per member of the committee.

Q. Did you have any general meetings of all the representatives after that?

A. Yes, sir.

Q. After the electric division committee met?

A. We had a general meeting of all the representatives, of what we call the joint interdepartmental, and requested it again.

3759 Q. Who attended that joint meeting of the interdepartmental committee?

A. All of the representatives from Norfolk and Richmond.

Q. Was every representative from every voting section and the special representatives from North Carolina, Williamsburg, and Fredericksburg there?

A. Yes.

Q. They all sat in one meeting and discussed this contract?

A. Yes, sir.

Q. Will you state how long those various sections lasted, Mr. Faust?

A. We had about eight different meetings there. First we had the joint interdepartmental meeting, which did not last very long. We just got acquainted with each other and got our purposes and views together. Then we divided off into voting section meetings. I think the voting section meetings took us until about three or four hours, probably, I guess. Then, as soon as they were over, the general committee meeting was held in which the Chairman, Secretary, and Treasurer were elected to the general committee. That meeting didn't last very long. Then we came back and got together at different committee meetings. After we had all of our Division Committee meetings then we came in for a joint interdepartmental meeting Saturday night, and it lasted well into Sunday morning.

2760 Q. On Sunday, July 18, 1937, was there any further action taken?

A. Action was taken that day; yes. After we went through the business of the General Committee meeting and made the first reading of the amendment to the bylaws, then a letter was drafted by Mr. White to present our request to the management of the Virginia Electric and Power Company, which was approved by the entire general committee, and Mr. Underwood, as Chairman, was given permission, you might call it, by the committee to sign that letter and send it in.

Q. I hand you Board's Exhibit No. 5, which is a letter from E. T. Underwood to Mr. Holtzclaw, and I will ask you if that is the letter which was drafted by the General Committee on that date?

A. That is the letter, as near as I can remember.

Q. That letter was drafted and presented to that meeting and approved at that time?

A. Yes, sir.

Q. Was the proposed contract in the form in which it was to be presented to the company read to the joint interdepartmental committee meeting on Sunday, July 18th?

A. Yes, sir; as it was presented on July 30th.

Q. Was it in final draft form or what was the form it was in when it was read?

A. On some yellow paper, on some white paper, and on some different things. But you had it all together there so that
3761 you could tell us what was on it. Some was typed and some was handwritten.

Q. In other words, it was read to the assembled group there from the original notes which had been taken down during the discussion? Isn't that right?

A. Yes, sir.

Q. I now hand you Board's Exhibit No. 8, which is a photostatic copy of the form of agreement dated the blank day of July 1937, and I will ask you if that is the contract which was approved at the joint interdepartmental committee meeting held at the Nansemond Hotel on July 18th?

A. I cannot answer so well as to the gas department and accounting and transportation, for the general provisions in the electric department, that seems to be the original draft that was read that night.

Q. In other words, the agreement as presented on July 19th to Mr. Holtzclaw, so far as the general provisions in the department to which you belong are concerned, were the same as were submitted to the meeting at the Nansemond Hotel on July 18th?

A. As best as I can remember; yes, sir.

Q. Mr. Faust, there has been some testimony here about the closed shop provision. Do you recall how many voting sections independently asked for the closed shop?

A. 25 out of 27.

3762 Q. In the original request that they turned in to the committee? Is that right?

A. In the original request; yes, sir.

Q. Mr. Faust, I hand you a paper entitled "Minutes of the Norfolk Interdepartmental Committee meeting. July 26th," and I will ask you if you attended that meeting?

A. Yes; I remember this one well now. That was the night we made arrangements for transportation to Richmond for the General Committee and as to how the other members of the Interdepartmental Committee were to go to Richmond and when they were to go.

Mr. WHITE. Mr. Examiner, I move that this paper be
3763 filed in evidence and marked for identification purposes as Intervener's Exhibit No. 17, and received in evidence.

Trial Examiner FORT. There being no objection, it will be received in evidence.

(The document above referred to was received in evidence and marked "Intervener's Exhibit No. 17.")

By Mr. WHITE:

Q. At that time, Mr. Faust, do you know what percentage of all the employees of the Virginia Electric and Power Company had joined the I. O. E.?

A. Do you mean on the 26th?

Q. Yes.

A. If I remember right, it was approximately 90 percent.

Q. Mr. Faust, when was the next meeting that you attended?

A. The next meeting that I attended was the Thursday night, I think it was, just before we bargained on Friday morning. Those minutes that you showed me make me recall another meeting that I attended.

Q. What was that meeting?

A. Mr. Tatem, Mr. Woods, and myself went to Suffolk a night or two before this meeting. I remember that now. We went down there and told them the purpose of the organization.

3754 We had a copy of a proposed contract and we read it down there, and most everybody down there approved it, especially the Distribution Department when they saw the 50 percent in there.

Q. The 50 percent increase that you were asking for?

A. Yes. There had not been very much activity down there. The fellow didn't seem to know what it was all about. So after we went down there that night there seemed to be right much activity from that night on in Suffolk. They began to turn in their cards and their initiation fee.

Q. Was that meeting held during working hours?

A. No, sir; it was not. It was held one night in the Chamber of Commerce Building in Suffolk at eight o'clock.

Q. This meeting, which you say you attended on the night of July 29th, that is, the general committee meeting, what took place at that meeting, if you recall?

A. We went over our proposed contract in detail that night and we discussed what plan we were going to take up, if any. We tried to get together as well as we could a comparison of wages and hours between the different departments as between Norfolk and Richmond.

Q. What did you find the difference was between the various departments in Norfolk and in Richmond?

A. I found that there were not any two alike.

Q. In other words, that the wage scales in Norfolk and in Richmond were entirely different for the same class of work?

3765 A. In the Electric Department. There was one department in which the wages were the same. That was the bus and rail, transportation.

Q. In other respects you say you found some discrepancies?

A. There was a difference in all of them that I can remember except the bus and rail.

Q. I believe your next meeting was the morning of July 30th with the management of the company. Is that correct?

A. Yes, sir.

Q. Mr. Faust, you heard Mr. M. C. Smith testify, did you not, in this proceeding?

A. I heard most of it; yes.

Q. Did you later read over the memorandum which he filed, which I believe is Respondent's Exhibit No. 14?

A. I read a part of it. I don't think I read all of it.

Q. Does Mr. Smith's testimony as to the negotiations on the contract substantially agree with your recollection of it?

A. Substantially; yes, sir. Not altogether, but substantially.

Q. Suppose you state, Mr. Faust, according to your recollection, what took place in your part of the negotiation of that contract?

A. If I remember right, Mr. Smith's recollection was that we did not start talking about the closed shop until after Mr. Holtclaw had opened the meeting.

Q. What is your recollection as to that?

3766 A. We started talking about it, and you yourself said that the committee was very insistent that the closed shop be provided for in there. And it seems Mr. Holtclaw—and he was the only one talking in behalf of the company then—was very much opposed to it.

Q. You heard Mr. Holtzclaw's testimony along that line as to what took place?

A. I don't remember.

Q. Then just state what did take place and what Mr. Holtclaw said and the negotiations at that time as you recollect them?

A. He was talking about a closed shop. He said he did not feel like we ought to try to put the company in a position or try to put ourselves in a position there of having fellows join the organization who did not want to. He said there were probably a lot of men there—and I found the same thing since—they did not want to join any organization.

We said we were going to insist upon it. I think then some question was raised about how we were going to keep the members of the organization, getting certain benefits—I mean how we were going to keep men not in the organization from getting

the same benefits as those in the organization unless they paid the dues in the organization as much as anybody else.

Mr. Smith remarked then if we had an organization and the fellows didn't want to support it and did not want to come
3767 in and belong to it he didn't think it should be the company's policy to state in a contract that they would have to join.

I asked him then if he knew of any other way to do it. He said, "Yes," and I said "What?"

He said, "Well, you can drop a wrench on their heads, or something like that."

Q. Was there very much argument about that closed shop provision?

A. Yes. Even before Mr. Holtzclaw left the room. And he did not stay in there long.

Q. After he left did it continue for any length of time?

A. After he left it continued until we went to lunch, with the exception that as soon as Mr. Holtzclaw left we took the proposed contract and started right from the first; and there were one or two clauses there, for instance, something about recognition, and we got through with those and we started right into the closed shop, and it lasted until after lunch.

Q. What happened after lunch that first day on July 30th?

A. Something happened during the lunch hour. All members of the general committee would eat together. We were talking about the matter, and we came to the conclusion if we couldn't get a closed shop we would just as well not even try to bargain for the other members in the general provision. So when we came back we start right off arguing again. Then Mr.
3768 Smith, as Chairman of the Executive Committee said that it might be a good idea to go ahead and see how close we might get together on the other amendments and come back to that one later.

Q. I believe Mr. Smith testified that after they finished discussing the general provisions that the committees broke up into groups. Is that your recollection?

A. Yes.

Q. You attended the Electric Division proceedings from that time on, didn't you?

A. Yes, sir.

Q. How was the request of the Distribution Construction Department received by the management for an increase in pay of 50 percent?

A. When they looked at it they said it was impossible to pay 50 percent. They seemed to think that. I didn't think so. I still thought we ought to have 50 percent.

Q. Do you still think so?

A. I still think so; yes.

Q. Will you please state how it finally worked out that the linemen got that five percent extra increase?

A. The only thing I can tell you is that all of the members of the Electric Division Committee were trying to help me to get the whole 50 percent.

Q. In other words, the men from the other voting sec-
3769 tions backed up your demand for a 50-percent increase for the linemen?

A. Yes, sir; they certainly did. If I remember right, the question was even asked how the other departments were going to feel if the distribution department was paid more than the others in comparison. And the statement was made—I think it was Mr. Tatem who made it, although I wouldn't say it for sure—that it was the general opinion of all the departments that the line department was lower paid in comparison than any other.

Q. In other words, it would be satisfactory to have the line department get a raise which would be larger than the other divisions got?

A. Yes, sir.

3770 Q. What were the other main points of argument in the negotiations of the electric division contract?

A. Overtime.

Q. Please state what happened about that.

A. Well, we never have had any extra pay for overtime. We have always wanted it, and that was the first chance we had to try to get it.

Q. You never had overtime with the Virginia Electric & Power Company before?

A. No, sir; with the exception if we were called out nights or Sundays we were paid two extra hours in addition to the regular time.

Q. What was the I. O. E. asking for?

A. We were asking for time and a half for all overtime outside our regular working hours.

Q. How about Sundays and holidays?

A. Double time for Sundays and holidays.

Q. Was there very much discussion about whether they were going to pay overtime at all?

A. Yes, sir.

Q. Was the agreement as to overtime which was finally embodied in the contract which was signed by the I. O. E. and the V. E. P. Company a compromise between the demands of the parties?

A. Yes, sir; there was a compromise. I felt that we got
3771 better than half way on it.

Q. There was some discussion among the committee representing the management about that overtime afterward, too, wasn't there, Mr. Faust?

A. Yes. We finally talked Mr. Smith into agreeing that the line department in particular ought to have time and a half for overtime, with the exception of an hour and a half each day, I believe it was. Mr. Throckmorton was opposed to paying any overtime to a man as long as he stayed on the job. He was perfectly willing to pay time and a half for overtime, and when he was called out on Sundays, but if he stayed on the job—if he is sent out to work 8 o'clock in the morning and work until 11 or 12 o'clock at night, he did not think he should have overtime.

Q. Do you recall what happened in the discussion?

A. They all went out and had their own rate.

Q. In other words, didn't they get into such an argument that they had to go out and iron out their own differences?

A. Yes, sir.

Q. As a matter of fact, the overtime provision in the contract, then, was the result of discussion, negotiation, give and take, between the parties?

A. The result of very much discussion, yes.

Q. You do not know what happened so far as the transportation, gas, and accounting and sales and general office were
3772 concerned?

A. The only thing I know about the overtime so far as they were concerned is the gas department had agreed to accept no overtime. And so after we found it out we argued for everybody to get overtime that had any emergency work, and the final clause was drafted to cover everybody.

I stated just now that Mr. Smith decided that the line department should be allowed just an hour and a half each day for straight time. He was not so much in favor of the other departments getting time and a half for overtime. So when we finally got him to agree there was two hours each day, and everybody who worked emergency time would get overtime.

Q. So, as a matter of fact, the line department might have gotten it on the basis of an hour and a half exception, which would pay that extra half hour, so the extra provision would be put in?

A. Yes, sir. I took it on myself to see that everybody got the benefits. It could not have meant so much over a period of a year, a half hour, but it meant 15 minutes each day. So I agreed,

so far as I was concerned, we would go along with the two hours and let everybody get the extra.

Q. Now, after the various departments had completed their negotiations what was the next meeting that was held? What did the I. O. E. representatives do?

A. You mean after all the negotiations were over?

3773 Q. No. I mean after the gas department, for example, and the electric department had gotten through with their separate negotiations.

A. Well, the separate negotiations had not resulted in anything so far as the final basis for a wage rate was concerned, and it had not resulted in a closed shop being agreed on by the company, and I think that most of the departments were waiting to base their wage rates on the wage rates of the electric department.

Q The 5 cents had already been agreed on, so far as the line department was concerned, wasn't it?

A. The 5 cents was agreed on the first thing the second morning of the negotiations.

Q. Do you remember what was done by the representatives after these various separate negotiations were completed?

A. We all got together ourselves, the general committee, and talked about what had happened in each subdivision, and the electric department had gotten the percentage of wage increase up as high as 10, 7½, and 5, on the same percentage basis that was testified the other day; and three of us had talked to Mr. Smith trying to get him to agree, and he would not agree to anything by himself; and so we got together and decided that we ask—we tried to hold our demand to 15 percent.

Q. Now, what was the report you got at that time from
3774 the men who were negotiating for the transportation contract? Had they been able to get anywhere on wages?

A. In reference to wages?

Q. Yes.

A. The report came to us that every time they started to talk about wages Mr. Jones started talking about hours.

Q. In other words, they had not gotten anywhere in the negotiations?

A. As far as bargaining for wages they did not get anything.

Q. After you had your meeting and decided on the 15 percent, then what did the representatives of the I. O. E. do?

A. After we——

Q. I mean, did you go back in joint session?

A. We went back in joint session then—everybody, the entire committee of the management and the entire committee of the general committee.

Q. What took place at that meeting? What was agreed upon at that meeting?

A. The general committee finally felt as though from the first they got it up as high as 15, 10, and 5. The general committee met with Mr. Holtzclaw, and they came out and they would not say they agreed to 15, 10, and 5. They would not even say they agreed for it to be that high. Then they went back again.

Q. What was the impression the I. O. E. committee got
3775 at that time?

A. The impression we had at that time was we were not getting a closed shop, so we decided to get wages as high as we could and wait for some other time.

Q. When they came back what was the final outcome of the whole thing?

A. When they came back they told us they could not settle the closed-shop provision that was in our contract; and so then everybody entered into discussion, you and Mr. Moore, too. It was decided to agree for us to have the closed-shop provision. We were still trying to hold out for a straight 15-percent increase, and they never would say if they would get it up to 15, 10, and 5 or not; so just before the meeting was over Mr. Holtzclaw came up and made the final statement, and he said he decided to agree to the provisions of 15, 10, and 5, but he could not give us the final answer until he met with the board of directors in New York on Wednesday, but he said he believed he could convince them that we would get it. So we felt we could not give him our answer either, because we had to take it back to the division committees. So we decided to meet again the following Thursday at 11 o'clock.

Q. Were you present at the meeting on Sunday, August 1st, when the agreement was drafted?

3776 A. Yes, sir.

Q. Were all the members of both committees there during the entire time?

A. All the members of both committees and most of the members of the interdepartments, who were not members of the general committee.

Q. Do you recall any agreements which were made at that time, I mean during the course of the negotiations, which were not incorporated in the articles of the agreement but were carried out by the company other than the 5-cent increase to the line department?

A. I remember one of them was a man changed from one shift to another by the management. He would be paid time and a half for the first shift for the whole period.

Q. Were there any agreements as to individual wage adjustments to be discussed?

A. So far as my particular department was concerned, we did not come to any actual agreement on the adjustment of pay. We talked about it, and they promised they would make some. Mr. Cartledge, although he was not a member of the general committee, had a list of men that he requested to make adjustments for, and they promised they would make adjustments for them, and since then I understand they did; and Mr. Walsh and Mr. McHorney had adjustments incorporated in their contract, and I think most of them were made effective.

3777 Q. After they got through drafting the contract on Sunday, what was the next step that you took with respect to the contract?

A. The next step that I took was a meeting of the division committee—electric division committee.

Q. When was that held?

A. Held in ——

Q. Norfolk or Richmond?

A. Held in Richmond.

Q. Richmond?

A. Yes, sir; on Sunday night.

Q. What took place at that meeting?

A. We adopted a resolution of the division committee accepting the proposal that the general committee had bargained for, but we were going to try to take it back to the individual members of each voting section. Every representative of the electric division was there.

Q. To take it back before the following Thursday, which was August 5th?

A. Yes.

Q. What did you do with respect to your particular voting section?

A. Well, I came back. At that time the organization was broke. In fact; we never had any money. We spent a whole lot. We had no meeting place.

3778 Q. They did have a meeting place in Richmond at that time?

A. They did have a meeting place in Richmond, but in Norfolk we had no meeting place. And I came back Monday morning and tried to talk to each and every individual that the contract affected, and I will say that not one of them opposed signing the contract.

Q. Did they talk about the closed-shop provision?

A. There was two or three said something about closed shop. They asked me why did I get the closed shop when I voted against it at the meeting at the Nansemond Hotel. So then I

explained the reason why I did vote against it down there that in our particular section that had not even been discussed, that I know of. And so when we had the meeting down there I would not vote for closed shop, something that affected the whole division, when they had not voted on it themselves. And before the contract was even bargained for I tried to talk to all of them—I would not say I talked to all of them at that time—and tried to tell them as near as I could the proposals of the contract, and they did not, not one of them, say anything about the closed shop. The main objections I heard about the closed shop was after the contract was signed, and it was not many then.

Q. Mr. Faust, did you go to Richmond on August 5th to sign the contract?

3779 A. Yes, sir.

Q. Did anything in particular take place on that day except signing the contract?

A. I remember that we had some fellows that had been helpers a good long time who would not get the advantage of the extra five cents; so I tried to get it arranged so that they would get it, too, but I was not successful.

3780 Q. As a matter of fact, you did not stop negotiating until the thing was actually signed.

A. Haven't stopped yet.

Q. Now, at that time, Mr. Faust, had there been any election of grievance men in the various outlying voting sections?

A. You mean on the 5th of August 1937?

Q. Yes.

A. No, sir; not that I know of.

Q. How soon after that were grievance men elected?

A. In my section I started right away, as soon as I could, to elect them from the different sections—colored laborers, outlying districts, linemen of the line department, linemen helpers, and cable department, and I think on September 4th—I think they were all elected by September 4th.

3781 Q. Mr. Faust, how were these grievance men elected from these various divisions? What did you do?

A. The colored men, I called them all in a group one afternoon; got them together around the corner of the plant, and told them to elect their grievance man; and the garage men—I think there was five—I called them the same way, outside the building, around the corner, and they elected their grievance man, and then the cable men, line department, elected their grievance man at a meeting held in the Central "Y," on the 17th or 16th of August. I think it was the 16th. At that meeting the contract was read, and I will say there was not anybody there that did not approve it.

Q. They all approved the contract as read to them at that time and elected their grievance men; is that correct?

A. Yes, sir. Since I think about it, yes; I do recall one man that said something about the Supreme Court wouldn't uphold the closed shop and check-off, or something like that. I don't remember. He was telling me something about reading it in the newspapers.

Q. Mr. Faust, I hand you the following papers: One dated August 11th, a meeting of the Cove Street distribution department, colored employee; one dated August 11th, a meeting of garage employees, Cove Street; one dated August 12th, a meeting of distribution department at Virginia Beach; one dated August 16th, a meeting of the distribution and construction
3782 department, Central "Y"; one dated August 19th, a meeting of distribution department, at Currituck, North Carolina; and one dated September 4th, a meeting of distribution department in Portsmouth; and I will ask you if those are a correct record of your meetings, which you have just described, electing the men to the grievance committees?

A. There are two of these that there were not meetings held for; one at Virginia Beach, and one at Currituck.

Q. Was that just a memorandum of what happened?

A. This is just a memorandum of what happened. There were two men at each place at that time, and I talked to both men from each department, and I told them—I explained what the purpose of the man on the grievance committee was, and told them they had as much right as anybody else to have a man, and the two of them should get together and select the one that they thought should be the grievance man, and they should let me know, and then they did that, and I made a memorandum of the meeting. The other minutes are minutes of meetings held to elect the grievance men.

Mr. WHITE. Mr. Examiner, I ask that these be received as Intervener's Exhibits 18 A, B, C, D, E, and F.

Trial Examiner FORT. There being no objection, they will be admitted.

(The documents referred to were marked "Intervener's Exhibits 18 A, B, C, D, E, and F," and were received in evidence.

3783 By Mr. WHITE:

Q. Mr. Faust, after you set up your grievance committee, did you have any grievances?

A. Yes, sir; had them before the grievance committee was ever even set up; had them dating back from the first day of August, the day we came back after the contract was bargained for.

Q. What was the nature of the first grievances which were handled by the organization through you?

A. The first grievances were matters of classification. We never have had any strict classification. A lot of fellows were starting in to do line work, and even some of them were in the cable crew. They had been doing some cable work, and they were still rated as helpers, and each and every man thought he should get advantage of the extra five cents. He being a cable splicer or a lineman, he wanted to be rated as a lineman or cable splicer, or whatever he was.

Q. With whom did you work on that proposition?

A. Mr. Holik.

3785 Q. How often did your voting section hold meetings, Mr. Faust?

A. Twice a month, every first and third Thursday night.

Q. How long has that practice been kept up?

A. Since December 6th, if I remember right.

Q. It has been testified, Mr. Faust, that a committee came to you representing the I. B. E. W., and asked that regular

3786 meetings be held of the voting section. Do you recall that that committee came to see you?

A. Yes, sir; I don't recall the date, but I recall their coming.

Q. Who were the members of that committee?

A. Mr. A. Davis, Mr. J. L. Judge, and Mr. L. D. Gallamore.

Q. What was that request, as made to you?

A. That request was that we hold regular meetings of the section, so that all of them would have a chance to know what was going on. At that time, I had a meeting every morning and every afternoon. So I called a meeting within three or four days after they were up there. I told them at that time, however, I would leave it up to the section, would call a meeting and let them vote on what time they wanted to have the meetings, how many times a month and what time of the month. I called the meeting, and it was voted that they wanted the first and third Thursdays each month at 8 p. m.

Q. And have you held those meetings regularly ever since?

A. Yes, sir.

3787 Q. I hand you papers showing minutes of meetings of the distribution and construction voting section under date of September 14th, October 18th, December 8th, December 16th, January 6th, January 20th, February 3rd, February 17th, March 3rd, March 17th, April 7th, April 21st, May 5th, May 10th, May 19th, and June 2nd, 1938, and ask you if those papers constitute a record of the meetings of the distribution and construction voting section since the meeting of August 16, 1937?

A. Yes, sir.

Q. Were you present at all those meetings?

A. Every one.

Q. Do these correctly transcribe what took place at those meetings?

A. Correctly transcribe the substance of it. I might say when those things first started, myself or the man that was
3788 elected secretary, either one, had never had any experience with keeping minutes, and all we knew about it was to put down just the substance of what happened. We didn't go into very much detail along in the first part until after we learned how the minutes should have been kept.

Q. So you put down, though, what you thought was the substance of what took place?

A. Yes, sir.

Mr. WHITE. I ask that these be received in evidence and identified as Intervener's Exhibits 19-A, B, C, D——

Trial Examiner FORT. With the necessary supplemental letters applicable.

Mr. WHITE. Yes: with the necessary supplemental letters applicable.

3789 Mr. HILTON. Mr. Examiner, along that line, counsel for the respondent and counsel for the Board have, practically in all cases, stipulated that the exhibit be filed in the case and be accepted as part of the record, without the necessity of having it printed.

3790 Trial Examiner FORT. They will be admitted, in any event, with that suggestion, and will be marked intervener's exhibits 19-A to 19-S, inclusive.

(The documents above referred to were received in evidence and marked "Intervener's exhibits 19-A to 19-S," both inclusive.)

3791 Trial Examiner FORT. The hearing will now be resumed.

By Mr. WHITE:

Q. Mr. Faust, referring to Intervener's Exhibit No. 19-C, minutes of the meeting of December 8, 1937, please state whether that was the first meeting that was held after the request of representatives of the I. B. E. W. that such meetings be held?

A. Yes, sir.

Q. So that request was prior to December 8, 1937?

A. Yes, sir; I think it was three or four days, or something like that.

Q. Prior to that time, however, you had held other meetings on the average of about once a month?

A. About that; yes, sir.

Q. Mr. Faust, there has been considerable testimony here with respect to certain arguments that arose in your voting section

over a request that the company be requested to cut the hours to 40 hours a week but pay for 44 hours?

A. Yes, sir.

Q. Will you please state what was that whole transaction?

A. As I remember, Mr. Judge made the motion and Mr. Davis seconded it on the 20th of January 1937.

Q. I refer you to Intervener's Exhibit No. 19-F and ask you to state whether or not that is the meeting at which this matter first came up?

A. Yes, sir; January 30, 1938.

3792 Q. That is right.

A. I believe I said 1937 before.

Q. Yes; you did.

A. It should be 1938. At that time or before that time I was under the impression that the Telephone Company was working that schedule, and I think most of the fellows around there were under the same impression. The way I felt about it was that the more stuff we had in any proposed contract that we had any basis of arguments for the better chances we had. And as a member of the Labor Committee on the 27th of January, one week later, the Chairman of the Labor Committee, C. D. Steele, made an appointment with E. D. Peterson, the manager of the Telephone Company, here. But Mr. Steele had to work, so he could not make that appointment, and he asked me to go over there.

So I met with Mr. Peterson. We tried to get all of the information as to how the Telephone Company worked. And in the meeting he told me that the Telephone Company had not worked like that for a year or so, that there had been some governmental regulation, although I don't remember just what it was but I believe he said the Social Security, which kept them from paying for any extra time. So the next meeting we had, which was the first Thursday in February, I brought it out and told the fellows I had meet with Mr. Peterson, and that the

3793 Telephone Company was not doing it any more and, according to him, it was against some governmental regulation.

We had quite a discussion on it. Finally one fellow made the remark that that was the job, to go up and try to bargain for whatever they wanted. So I told them if that was what they wanted, to go up and ask for four hours that we didn't work and if they couldn't show me someone else was doing it, that they had better get somebody else, because I wasn't going to do it. Two or three of them got right hot about it, and we had quite an argument about it. Finally one man made a motion that we drop that motion. We had quite a discussion as to that,

being as the man who had made the motion wasn't there. Finally the man who made it requested that we put it to a vote anyway. So it was put to a vote. I don't think everybody voted there. I think the vote was 18 to 2 in favor of dropping the motion.

Q. I refer you to Intervener's Exhibit No. 19–G and ask you if that is the meeting to which you referred where this took place. That is Exhibit No. 19–G that I refer to.

A. Yes, sir; it is.

Q. That is the meeting of February 3, 1938?

A. Yes.

Q. What was the next step in this trouble?

A. The next step was the next meeting we had, and they
3794 started talking about it, that the men didn't vote that original motion, after they argued about it at the meeting before that we were to bargain for it, and then they came up there and said that that wasn't the motion as originally made, that they didn't want to vote on it that way.

Then I asked the question why have all of the argument before, if that wasn't the motion. I said that the motion that we had discussed was calling for four hours that we didn't work. So the motion was remade that night and seconded by the same two men requesting the forty-hour week.

In the meantime, I told them if they wanted to bargain for 44 hours a week I could do it if anybody else could. So far as I was concerned I wasn't supposed to take any personal attitude whether it should be 40 or 44 hours; but I wouldn't ask for the four hours extra pay that we didn't work for.

So when the new motion was made it was made to read like that, to work 40 hours a week but get enough of an increase in hours to make up for cut in the hours.

Q. You mean enough of an increase in the rate of the pay?

A. Yes; I mean enough of an increase in the rate of pay to make up for the four hours that were cut, and the motion was made in that way so as not to conflict with any other increase.

Before that motion was put to a vote Mr. Dilling made a
3795 motion that we not vote on it at that meeting but vote on it at the next meeting so as to give everybody a chance to think about it. Mr. Harrell seconded the motion, and it was put to a vote and carried 17 to 16 to vote on it at the next meeting.

At the next meeting it was voted on. The way it was voted on then was whether it should be 40 hours a week or 44 hours a week. It was overruled 56 or 57 to eight.

Q. Mr. Faust, I hand you Intervener's Exhibit No. 19–I, the minutes of the meeting of March 3rd, and I will ask you if that is the time when the matter was finally disposed of?

A. That is the time when the motion was voted down but not the time when it was finally disposed of, because it has not been disposed of yet.

Q. It was disposed of so far as your voting section was concerned?

A. Yes; so far as trying to bargain for it was concerned.

Q. Some statement was made that this particular meeting on March 3rd was packed with negro members and you voted them down. How many negroes attended that meeting?

A. Nine.

Q. Out of a total attendance of how many?

A. I think there were 72 there that night.

Q. How many votes were finally cast in favor of reducing the hours to 40 hours a week?

A. 57.

3796 Q. In favor of reducing the hours?

A. Yes. But there was such a big crowd there that night and the motion was put to a vote and there were eight men stood up. The eight were very easy to count.

Q. Who were those eight? I mean how were they so easy to count?

A. I don't remember who the eight were. I say it was easy to count eight people standing up in a crowd. But when you asked those to stand up who were opposed to the motion and try to count them, 57 was my count.

Q. 57 voted in favor of doing what?

A. In favor of keeping the hours as they were

Q. Which was 44 hours a week?

A. Yes, sir; 44 hours a week.

Q. And eight of them voted in favor of reducing it to 40 hours a week?

A. Yes, sir.

Q. There was another motion made at that meeting on March 3rd, the minutes of which are in evidence as Intervener's Exhibit No. 19-I, made by Mr. Judge and second by Mr. Davis, to strike out section D, subsection 1, of our present contract. What is that section?

A. That section is the one that relates to the closed shop provision.

Q. State what was the outcome of that motion.

3797 A. Practically the same majority—56 or 57 to 8.

Q. Consequently your voting section on March 3rd of this year on a direct issue as to a closed shop voted 56 to 8 to retain that provision? Is that right?

A. Yes, sir.

Q. Did you hear Mr. Harrell testify?

A. I heard most of it; yes, sir.

Q. Do you recall his statement that the I. B. E. W. asked for these meetings for the purpose of trying to break up the organization?

A. Yes, sir.

Q. Please state whether the action of the I. B. E. W. members at the I. O. E. meeting was of such a nature as to cause discord in the organization or to promote it?

A. Well, there was a certain amount of discord, whether it was in the meetings or not. There was just a certain amount of discord even at work, even in the garage in the morning or afternoon. It seems every meeting we had up there that there was some kind of an argument and it was mostly the eight men who voted for the motion of 40 hours a week and the same eight men that voted against the closed shop.

Q. There were those eight men who voted against the field?

A. That is right.

Q. Do you call the roll at these meetings?

A. I started to call the roll at the meeting of March 3rd,
3798 I believe. Before that I had not called the roll.

Q. Since that time you have called the roll and kept a record as to who was present at the meeting?

A. Yes. I have a record of every man who attended the meetings since March 3rd.

Q. Therefore, your record discloses exactly which of the negro members of the voting section voted at that meeting?

A. Yes, sir. It discloses which ones were there but not which way they voted or whether they voted.

Q. But that they were at the meeting?

A. Yes.

Q. When were you made the General Chairman of a General Committee of the I. O. E.?

A. On the 14th of March 1938.

Q. What vacancy were you filling?

A. A vacancy created by the illness of Eugene T. Underwood.

Q. Did Mr. Underwood resign at that time?

A. He resigned due to illness; yes.

3799. Q. What is Respondent's No. 37?

A. That is a copy of the changes that the company proposed as given to the committee on April 29th.

Q. And what is Respondent's Exhibit No. 38?

A. That is a copy of what the General Committee gave to the Executive Committee on the morning of April 29th.

Q. In other words, you traded proposed changes at that time? Is that right?

A. Yes.

3800 Q. Your answer is yes?

A. Yes, sir.

Q. What meeting was to follow the meeting of April 29th?

A. I didn't understand your question.

Q. What meeting was to follow the meeting of April 29th, Mr. Faust?

Trial Examiner FORT: Are you going to vary the facts by this proof as to just what the sequence was?

Mr. WHITE: Not a bit. Maybe I can shorten it.

Trial Examiner FORT: I wish you would.

By Mr. WHITE:

Q. Mr. Faust, did you hear Mr. Hotlclaw testify as to what took place at the meeting of April 29th and May 9th and thereafter?

A. Yes, sir.

Q. Is your recollection of what took place substantially the same as his recollection?

A. Yes, sir.

Q. On page 1011 of the record, Mr. Judge testified that he signed an I. O. E. membership card in the Cove Street Garage at your request?

A. At my request?

Q. Yes. Is that true?

A. No, sir.

Q. Did you present a membership card to Mr. Judge for signature?

A. Not that I know of.

3801 Q. He testified further that it was during working hours. Did you have any membership cards signed during working hours?

A. No, sir. It is my recollection that he said Brown was the man.

Q. He stated Mr. Faust on several occasions presented a card to him during working hours on company property?

A. No, sir.

Q. I am referring to page 1011 of the record.

A. No, sir. I don't know that I ever talked to Judge about a membership card.

Q. Did you ever talk to anyone about a membership card during working hours on company property?

A. I might have talked to them on company property or company time but I never even had any cards on company property until after the contract was signed.

3807 Q. Did you ever tell Mr. Harrell that the I. O. E. was affiliated with the American Federation of Labor?

A. I have never told anybody. I never thought such a thing.

Q. Mr. Harrell testified, on page 1297 of the record, as
3808 follows:

"Question: I may have misunderstood you. Mr. Faust never made any statements to you that the I. O. E. was affiliated with the American Federation of Labor, did he?

"Answer: Yes, sir.

"Question: When did he make that statement?

"Answer: I could not tell you. He made the statement a number of times. That was all you could get out of him, 'affiliated with the American Federation of Labor.'"

Did you make any such statement to Mr. Harrell?

A. No, sir.

Q. Mr. Faust, did you ever join the I. B. E. W.?

A. Yes, sir.

3812 Q. When did you join the I. B. E. W.?

A. I don't remember exactly when it was. It was along about the first part of July.

Q. Was it before or after you had been elected a representative of the I. O. E.?

A. Before.

Q. At the time that you joined did the I. B. E. W. have a majority of your group in its membership?

A. I had seen a clipping in the newspaper to that effect, but I did not know it to be a fact. That is the only information I had, and I heard rumors.

Q. As far as you know, how many members did they have?

A. I do not even know. I heard Mr. Fowler testify they had 35 or 40, but of my own recollection I do not know.

Q. Would 35 or 40 be a majority in your group?

A. No, sir.

Q. When you came to the meeting at the Nansemond Hotel were you then a member of the I. B. E. W.?

A. Yes, sir.

Q. Did you ever make any secret at that time of the fact that you were a member of the I. B. E. W.?

A. No, sir.

3813 Q. As a matter of fact, did you not tell that meeting that you were a member of the I. B. E. W.?

A. I believe I did. I told most everybody else down there.

Q. Did that make any difference in the attitude of the other members of the I. O. E. toward you?

A. Not that I know of.

Q. Are you now a member of the I. B. E. W.?

A. I don't think so. My dues are pretty far behind. I don't know just how far they got to go before I wouldn't be a member.

Q. Why did you stop paying dues?

A. Well, we had a good organization, and it seemed like so much discord there, I just stopped paying dues.

Q. At the time you organized the I. O. E., or helped to organize the I. O. E., did you feel in any way antagonistic toward outside affiliations?

A. No; I didn't feel antagonistic toward outside affiliations.

Q. What was your reason, then, for continuing with the I. O. E., rather than with the I. B. E. W.?

A. Well, they had an election down there, and the majority of them voted—voted for me as representative, and I thought, if I was any kind of a man at all, I ought to try to carry it out. I was criticized some for taking it, but I made the
3814 statement that I was going to do the best job I could as representative, and if at any time I ever saw any sign of company domination or company interference or influence that I was going to quit right then and there, and everybody would know about it.

Q. Do you feel the same way about it still?

A. Yes, sir; I still feel the same way about it.

Q. Have you ever seen any signs of company interference in the affairs of the I. O. E.?

A. Not one.

Q. Did you see any indications of company domination at the time you were organizing the I. O. E.?

A. No, sir.

Q. So far as you know has the company in any way encouraged or discouraged the organization of the I. O. E.?

A. It was never encouraged or discouraged as to my membership in the I. O. E. or I. B. E. W.—neither one.

Cross-examination by Mr. MOORE:

Q. With reference to that last answer you gave, a moment ago, where you said that you knew of no signs and had no evidence of any effort by the company to dominate or interfere with your union affiliation, have you had any signs or have you
3815 had any evidence of any attempt on the part of the company or any of the management to interfere with or dominate any of the other employees with respect to union affiliation?

A. To my knowledge; no, sir.

3821 Q. I now hand you a paper, which is a photostatic copy of a newspaper article in the Virginian Pilot of Norfolk of June 17, 1937, being entitled Respondent's Exhibit No. 11, and I will ask you to read the last column of this article, begin-

ning with the paragraph: "R. E. Elliott, Jr., the moving spirit in the plan to organize employees of the Virginia Electric & Power Company, said he had conferred with Cram, but there was little chance of V. E. P. men affiliating with the C. I. O." Then, with the quotation that there begins, will you read the rest of that column [handing the document to the witness]?

(The witness examined the document.)

Q. Now, this article purports to report what occurred at this meeting at the Navy "Y" on the previous night, June 16th. Is that article, insofar as it refers to Mr. Elliott's statement in the last column there, a true and correct statement of the statement that he presented to that meeting?

A. No, sir.

Q. What are the differences?

A. Well, the statement he made at that meeting could be covered in one paragraph of that. He just made the statement that the bus men from the transportation department had agreed to come in with us as an organization, or with the I. O. E.

3822 as an organization.

Q. Did he say anything at that meeting about having been offered a job by the company?

A. No; not at that meeting.

Q. But he did say, however, that the bus men had decided to come in with the other organization?

A. Yes, sir.

Q. Now, at this meeting of the I. O. E., later on, where this spring several questions were voted on, including asking for 45 hours' pay for 40 hours' work, you said eight men voted for that proposition, and everybody else voted otherwise, as I understood you.

A. No; the motion was changed for that.

Q. What was the motion?

3823 A. The first motion was 44 hours' pay and 40 hours' work, and the other motion made was to decrease the number of hours per week from 44 to 40, and to increase the hourly rate enough to take care of that and not to conflict with any other increase. That was the second motion that was made, and that was voted down 56 or 57 to 8.

Q. Who were the eight votes?

A. I don't recall just exactly who the eight votes were. I couldn't attempt to say. I am pretty sure who they were, but I am not sure enough to swear to it.

Q. Have you any record as to who they were?

A. I have not as to who actually voted on it. I do know some of them that voted that way.

Q. Suppose you give us the names of all of those that you can recall of the eight.

Mr. HILTON. Mr. Examiner, the witness has just stated that he does not want to swear which of those men voted against the motion.

Mr. MOORE. He was talking about the whole eight men.

Mr. HILTON. I do not think it is fair to press the witness.

Mr. MOORE. I am asking him now as to who of these eight that he does know.

Trial Examiner FORT. I will let him testify as to those that he knows.

3824 By Mr. MOORE:

Q. I want you to give us as many as you can recall.

A. I can remember Davis, Judge, and Heath, all right. I won't swear to any more outside of those three.

Q. Do you know whether Harrell voted or not?

A. I don't remember. I don't even remember right now whether he was there at that meeting or not.

Q. But you do definitely remember Davis, Judge, and Heath?

A. Yes; I remember those three.

Q. You refer to the fact of the meeting on June 1st, when Mr. Elliott presented to the meeting a constitution and bylaws, and that you were present?

A. Yes, sir.

Q. Did you learn at that meeting as to whether anybody had authorized him to prepare a constitution and bylaws to present to that meeting?

A. No, sir; I never did know where they came from.

Q. Was there any statement made at that meeting indicating as to who had authorized him to have a constitution and bylaws prepared to present to that meeting?

A. Yes; if I recall right, the statement he made at first was that he had prepared the constitution and bylaws, and they
3825 were presented to the meeting in Richmond that same night.

Q. You stated in direct examination that he had a chart with a big circle up at the top and little circles down under that; did you not?

A. Yes, sir.

Q. What is the nature of the discussion that developed about that big circle?

A. I think most of the discussion was based around that big circle. It was supposed to represent the director, as to how much salary he should get, what his powers were, and how to get him out.

Q. Did Mr. Elliott advocate his plan strongly, including the big circle?

A. Yes, sir.

3826 Q. Was there any speech or talk as to who was to be the big circle?

A. I think somebody got on the floor and stated his impression.

Q. Go ahead and tell us about it now.

A. I don't recall just who it was, but somebody got up and made the statement that they wouldn't take anything like that back, or they wouldn't vote on anything like that for the bunch of men that they represented. They said if they were going to have anybody represent them they would like to know who it was and what their powers were before they approved of anything like that.

Q. Would you say that the meeting was a very harmonious meeting or not?

A. No, sir. It was not exactly harmonious, but there wasn't so much argument up there. After the argument started Mr. Fatem made a suggestion that they get some copies of the constitution and bylaws printed and put them out to the men for approval all over the district.

Q. So far as you know, was the constitution and bylaws such as Mr. Elliott had there at the meeting of June first
3827 ever presented to a group of employees for consideration, Mr. Faust?

A. I never did see one of them after that night.

3835 Cross examination by Mr. HILTON:

Q. And at that time, that is, around April of 1937, did you ever ask any of your foremen for any advice with respect to your right to join labor unions?

A. No, sir.

3836 Q. Was that a topic of discussion among any of the employees at any of the plants, so far as you know?

A. So far as I know it was not.

3842 Q. Did you at any time learn of the National Labor Relations Board in March or April, let us say, of 1937?

A. I think about the first time I ever heard tell of the National Labor Relations Act was May 24, 1937.

Q. Did you know before May 24, 1937, that you had the right to form or to join or assist in any labor organization of your own choosing?

A. I had never been told anything to the contrary and I had never given it much thought.

3847 Q. Then, you did get to this speech on May 24th, that same evening, did you not?

A. Yes, sir.

Q. And that was held about 8 o'clock in the V. E. & P. auditorium here in Norfolk?

A. Yes, sir.

3850 Q. Do you recall at that meeting any official saying that he had received petitions from various groups of employees with respect to working conditions in that company?

A. They said something about getting requests or petitions from five different departments.

3853 By Mr. HILTON:

Q. I believe one of the officials of the company was asked what kind of a petition the labor organization would have to submit before it could be recognized; do you remember that?

A. Yes, sir.

Q. And I believe you testified that one of the officials said, "Any kind, just so there was proof it was bona fide."

A. Did I testify to that?

Mr. SPENCER. Yes; on page 3693.

3854 Q. Who made that statement?

A. I think Mr. Throckmorton made that statement.

Q. What did you understand by that statement?

A. I understood from the statements, as coupled together, that any group involved were a bargaining unit if they had bona fide proof of it, if they had proof that they represented a majority bona fidedly.

Q. What is your understanding of the proof that they would have to produce?

A. I never had any understanding of it. Somebody asked if they had to have it written, and somebody said that it didn't make any difference, so that it was proof.

Q. Well, did you later learn what kind of proof was 3855 necessary?

A. I learned that we had to have proof that we were representing a majority of the group that we were to bargain for. I learned that before we went up there to bargain.

Q. What kind of proof did you learn was necessary—written or oral, or how?

A. We had to have written proof.

Q. You had to have written proof in the form of membership cards; had you not?

A. Yes, sir.

Q. Then, after the questions had been answered, you were told that the representatives present could have a meeting and decide whether or not you wanted to form any labor organization; were you not?

A. No, sir.

Q. You were not told that?

A. No, sir.

Q. What did they tell you?

A. They told us that we could retire, and we could stay there and do anything we wanted to.

Q. What did you understand by staying there and doing anything you wanted to?

A. I understood just what it meant—I could do anything I wanted to up there.

Q. Well, what do you mean by that, that you could do
3856 anything you wanted to up there? You don't mean that you could have pulled up the chairs there if you wanted to, do you?

A. From what they said we could have.

Q. You could have?

A. Yes, sir.

Q. You had been informed in the beginning, however, that this was a speech to inform you in regard to the Wagner Act?

A. Something like that; yes, sir.

Q. Something like that?

A. Yes.

Q. Now, you know, Mr. Faust, that Mr. Holik told you it was to inform you of your rights under the Wagner Act just that afternoon; did he not?

A. I can't remember exactly what was said. It was told to us that we were supposed to select some representatives to go up there and hear Mr. Holtzclaw's speech in regard to the Wagner Labor Act.

Q. Did not Mr. Holik also tell you that you had a right to form and join any labor organization you wanted to?

A. Yes, sir.

Q. About 5 o'clock that afternoon?

A. Earlier than that.

3857 Q. Did you not then get in touch with Fleming and find out what was meant by a labor organization?

A. Yes, sir.

Q. When these officials told the men that they could stay there and decide or do something for themselves, you had no idea what that meant; did you?

A. They didn't say anything about starting to do anything. We were to be by ourselves; we could stay there and do anything we wanted to.

Q. And by doing anything you wanted to, you had no idea as to what they meant; had you?

A. I had not; no.

Q. No idea at all?

A. We were not selected to form any kind of an organization or anything. We were selected to go up and hear that speech and bring the substance of the speech back to the men that we work with.

Q. What was the first thing you did after you had the use of the auditorium for any purpose you desired?

A. The first thing I did was to look and listen.

Q. Did everybody look and listen?

A. No; I don't think anybody did that but me.

Q. Did not someone say, "Well, are we going to start a union?"

A. It seemed like everybody was talking at one time, and
3858 then this fellow jumped up and said, "Well, let's go home. These fellows don't want any kind of an orgaization."

Q. Then didn't somebody jump up and say, "Do you want an organization?"

A. He said something like that.

Q. Who was it that said that?

A. He was a bus driver.

Q. A bus driver?

A. Yes, sir.

Q. You were not surprised when the representatives started talking about an orgaization, were you?

A. Well, I can't say I was surprised.

Q. You were not disappointed, were you?

A. Yes; I was disappointed. I really was.

Q. Did you join in any of these discussions after you had the auditorium to yourselves?

A. I don't remember talking to anybody else there that night, with the exception of Morris and P. D. Brown, after they left.

Q. Nickerson was the fellow that took the platform that night, was he not?

A. A man that I learned later was Nickerson did.

Q. You did not know Mr. Nickerson at that time?

A. No.

Q. Then, was it Tatem that made the suggestion the men
3859 should report to the different departments what occurred at that meeting?

A. I think Tatem made the suggestion up there that night that we not take any action, and take back to our men what had happened up there that night, and meet there the following Monday night.

Q. Was there any vote taken on that?

A. I don't remember whether there was a vote taken or not. I don't believe there was, though.

Q. Everybody agreed to it, did they not?

A. Everybody agreed to it I think.

Q. You had about 60 or 70 present at that meeting, had you not?

A. Close to that.

Q. How long did that meeting last?

A. About 30 or 40 minutes.

Q. And that is all that happened during that 30 or 40 minutes, one man said, "We don't want a labor organization; let's go home," another said, "We do want a labor organization," and then what Tatem said; is that right?

A. There was a whole lot of argument up there, standing around, I suppose; before Nickerson got up there, they jumped up and said that.

Q. And they were arguing about unions?

A. I would think so.

3861 Q. Was there any general dissatisfaction among the employees of the company around May 24, 1937?

A. So far as I know; no. I mean not enough to stir up a lot of argument, or anything like that.

Q. Around this same time, did you believe that any labor organizations or any labor unions were necessary for the employees of the company?

A. I have always thought that a good organization was a good help, no matter how good the company was or how bad.

Q. Did you believe at that time that any union was necessary among the employees of the company?

A. I had never even given it a thought at that time.

Q. You had never thought of forming any union at that time, had you?

A. I never even thought of joining one.

3868 Q. Did you express any opinion to the men then about the advisability of having an independent organization?

3869 A. I don't remember about advising anybody about having an independent organization. I don't remember advising anybody to have an independent organization.

Q. Did the men seem to want an independent organization as distinguished from any outside organization?

A. Yes, sir.

Q. They did?

A. Yes. They voted on it on May 26th.

Q. Then, on May 26th you came back to the Cove Street Garage and then you had a meeting there, didn't you?

A. Yes, sir.

Q. What time of day was that meeting held?

A. If I remember right it was held at four-thirty. I couldn't swear to it, but I think so.

Q. Did you notify the men that there was going to be a meeting that day?

A. No, sir.

Q. Who decided to hold this meeting?

A. Brown, P. D. Brown.

Q. How did Brown notify the men that there was going to be a meeting that day?

A. I don't know.

Q. How were you notified?

A. I think Brown told me himself.

Q. When?

A. That morning.

3850 Q. Did you tell any of the men that there were was going to be a meeting?

A. I told all of the men in my crew.

Q. And were all of the crews present that evening?

A. I think all of the line crews were present. I wouldn't say definitely all of the members of the line crews were there, but I think some member of every crew was there.

Q. So far as you knew, all of the linemen in all of the crews had notice that this meeting was going to be held?

A. So far as I knew; yes.

Q. Were there any foremen present when you were holding this meeting?

A. No.

Q. Did you get permission to have the use of the garage at this time for this meeting?

A. I did not.

Q. Did you know if anybody did get permission for it?

A. No.

Q. Was that held at the same place as the first meeting was held?

A. The same place.

Q. Who took charge of the meeting? Was it Brown?

A. P. D. Brown.

3851 Q. Wasn't there a crew ready to go to North Carolina to be down there about a week, and on the same day they were to leave?

A. That is right. I recall now all of the line crews were not there. One crew left for North Carolina that morning.

Q. Didn't you vote that crew before they left?

A. Did I vote the crew before they left?

Q. Yes.

A. I talked to the fellows. They had seven fellows in the crew and I gave them seven pieces of paper and asked them to put down there what they wanted, who they wanted to represent

them and what they wanted, and put down anything they wanted to and sign their names to it.

Q. Did those seven men sign those slips?

A. Yes.

Q. And did they designate you as representative?

3872 A. Yes.

Q. And that is all you told them; to sign the names on this slip and designate someone to represent them?

A. No. They filled out the slips themselves.

Q. I understand you did not do it. But didn't you tell them before they signed the slips that they were to write someone's name on those slips and designate that person as a representative for them?

A. They were asked to put down two things—what kind of organization they wanted and who they wanted to represent them, on Wednesday morning, May 26th, 1937.

Q. What did the seven men do with those slips?

A. The seven men gave them to me.

Q. What was their vote with respect to the kind of organization they wanted?

A. What they put down there was collective bargaining.

Q. By that there was meant the inside organization, wasn't there?

A. That was what was brought up that afternoon. I didn't even know myself that morning.

Q. None of them put down, let us say, A. F. of L. or C. I. O., did they?

A. No, sir.

Q. And you were designated as the representative, weren't you?

A. By all seven of them.

3873 Q. Where did you get those slips of paper?

A. Where did I get those slips of paper?

Q. Yes.

A. I cut them out of an examination paper from the International Correspondence School. And some of them had some writing still on them.

Q. What time of the morning was it that you voted this crew?

A. I didn't vote the crew that morning.

Q. I am sorry. I mean when you gave them the slips.

A. Just before they went to North Carolina, just as they were getting ready to go.

Q. They filled out those slips just as you gave them to them?

A. Yes.

Q. And gave them back to you?

A. Yes.

Q. Did you wait around for them to do that?

A. I didn't have to wait around for them to do that, but they gave them back to me.

Q. How long did it take to do that?

A. It didn't take long, because they were going out at eight o'clock and there are mighty few mornings when I get around there much before eight o'clock.

Q. What did you do with the slips when you got them?

A. They counted the slips that afternoon with the other
3874 votes if I remember right. I am not sure about that. I better not talk too fast. I had them up there that day. I don't know whether they were counted or not; but they were up there.

Q. Those slips were included with the votes of the other crews, were they?

A. I wouldn't say for sure, but they were up there at the meeting.

Q. You and Brown had discussed how you would hold this election, didn't you?

A. The only thing he told me was this. We got together Monday night after we left the place over there on May 24th and were talking about having to hold a meeting. So I told him then this crew was going to North Carolina Wednesday morning, and we ought to try to hold it before then. And he said if we couldn't hold it before then we would have to get their votes as to what kind of an organization they wanted. He said we would hold the meeting and find out what kind of an organization the men did want or just what they did want to do.

3875 Q. How about the 26th when you had this vote? Who was designated as representative then?

A. I don't know that anybody was designated as representative. Paul Brown was elected Chairman and N. F. White was elected Secretary.

Q. Weren't you elected to any office at all at that time?

A. I was elected as Secretary but wouldn't take it.

Q. And you had only one Chairman at that time? Is that right?

A. That is right.

Q. And you had just the one department; that is, the line department and cable department were one division?

A. No; the whole thing down there, the whole Cove Street.

Q. All of Cove Street?

A. The meter department and all.

Q. Did you tell the men the purpose of voting at that meeting?

A. No.

Q. Did Brown tell them?

3876 A. Yes.

Q. What did he tell them?

A. He told them we were up there for the purpose of finding out what he wanted to do and what kind of an organization we wanted.

Q. Did he tell them that the election would be held to select a representative to represent that group?

A. No, sir.

Q. He did not?

A. The only thing he said about that was that we would have to elect a Chairman and a Secretary, before he even started talking about the union. It has been so long ago, but so far as I remember anything about representatives, there wasn't anything said about that. There was a Chairman and Secretary elected.

3879 Q. I am just trying to find out myself. Mr. Faust, you had an election on May 26, 1937, among the linemen or, I mean, among the Cove Street employees, to determine whether or not they wanted an inside organization or an outside organization, didn't you?

A. Yes.

Q. They were also to vote upon who would represent this group of employees in that labor organization, didn't they? Isn't that right?

A. The talking you are doing now kind of brings back something to me. The night of May 24th when they made up their minds to have the next meeting up there on the first of

3880 June, they asked that the fellows come up there, or they asked that everybody find out first what kind of an organization they wanted and to bring proof up there that they represented them.

Q. That they represented the group?

A. Yes, sir.

Q. And all of this was perfectly clear, so far as you know, to the men at the Cove Street plant when they were voting to elect Brown as the Chairman and White as Secretary of that group?

A. I expect it was just as clear to anybody else as it was to me.

Q. It was very clear to you, wasn't it?

A. It was clear enough that I knew what I was doing.

3884 Q. Now, before this meeting was held was there any campaigning done, say, among any of the employees on Cove Street?

A. So far as I know, no. I have heard about some since I have been in this hearing, though.

Q. And at that time, that is, on May the 26th, a petition was passed around and the men signed it?

A. A petition was prepared almost at the top of the ramp on the second floor of the garage, and people were asked to sign it.

Q. And that is the petition in evidence here which has been identified as Intervener's Exhibit No. 3?

A. Right.

Q. And was that petition prepared before or during the meeting of May the 26th?

A. I do not know. The first time I remember seeing the petition was just before the meeting was over. Brown said he had the petition, and he read off the top line of it.

3885 Q. Did Brown read that petition at that meeting?

A. Yes, sir.

Q. Were any questions asked by the men in regard to what was contained in the petition?

A. I do not remember as there was. There has just been some discussion about time and a half for overtime and increase of pay just before that. I do not remember just whether there was any discussion on what the heading of the petition was or not.

Q. Well, isn't it a fact that Brown simply discussed the petition in the light that it was a request to increase the rate of pay?

3886 A. No, sir.

Q. He did not?

A. No, sir.

Q. Did he tell them that by signing that petition they were electing him as chairman of their group?

A. To represent them at the next meeting.

Q. At the next meeting of June the 1st?

A. June the 1st.

Q. And I believe you stated that Judge and Harrell signed the petition, Intervener's Exhibit No. 3, is that right?

A. I saw their name on it; yes.

Q. You did not get them to sign that petition, did you?

A. No, sir. I did not get anybody to sign it but myself.

Q. Do you know whether or not that petition went around in the form it is now in; that is, separate pieces of paper clamped together?

A. I do not know. I know there was a big line up there that afternoon, everybody getting out to sign it.

Q. Did you ever see that petition, say, while you were out working?

A. No, sir.

3887 Q. Now, on June the 1st there was a meeting of the committees held, is that right?

A. There was a meeting of some group of men.

Q. And they were the representatives who had been elected the same way as Brown had been elected at Cove Street?

3888 A. I don't know how the others were elected, and I don't know if all the others were representatives.

Q. Well, was it your understanding that it was a meeting of the representatives?

A. That is what I understood; yes.

Q. And you went to that meeting, didn't you?

A. I went there as a visitor; yes.

Q. Was it open to all of the employees of the company?

A. So far as I know, it was. It seems to me there was a bigger crowd than there was at the first one. It seemed like it was.

Q. Now, at that meeting Elliott presented his plan of Employees' Association of Committees, didn't he?

A. Yes, sir.

Q. Did Elliott have any trouble getting the floor at that

3889 meeting?

A. No, sir; not that I remember.

By Trial Examiner FORT:

Q. Did you state where it was held?

A. It was held on the 6th floor of the V. E. P. building.

By Mr. HILTON:

Q. Now, I believe at that meeting Reutt suggested that they vote on the constitution and bylaws that Elliott had at that meeting.

A. I think he did; yes, sir.

Q. And did Elliott read the constitution and bylaws at

3890 that meeting?

A. I don't know whether he read it all or not, but he read something out of a paper up there. Something about a director.

Q. And this man was to be a powerful man, was he not?

A. He was that.

Q. And Tatem and Morris, I believe you stated, objected to voting on this constitution and bylaws because Elliott had no authority to present them; is that right?

3891 A. I don't think I said that.

Q. I did not say you said it. I am asking you that.

A. Mr. Tatem and Mr. Morris objected to the voting on it then until they took it back to the men they represented.

Q. Until Elliott took it back to the men he represented or until Tatem and Morris took it back to the men they represented?

A. Until Tatem and Morris.

3893 Q. Now, this meeting on June 1st, the meeting of the committee, that had already been agreed upon by the representatives on May the 24th, hadn't it?

A. The meeting for the first day of June?

3894 Q. Yes.

A. Yes, sir.

Q. Was that what was referred to as the steering committee?

A. I did not hear anything about the steering committee until after that meeting.

Q. Well, at the meeting of June the 1st was anything said about having a steering committee?

A. I do not recall it.

Q. Well, when was the first time you had any knowledge of the steering committee?

A. About June the 4th or 5th.

Q. Well, had any kind of an organization been determined upon or decided at this meeting of June the 1st?

3895 A. No, sir.

Q. All right. One June 3rd, when Brown, Morris, and Tatem went to Petersburg, was it then decided by the com-

3896 mittees or the members present at that meeting in Petersburg to form a steering committee?

A. That was my understanding.

3902 Q. Did you learn at that meeting of June 16th that the constitution and bylaws had been adopted by the Richmond Steering Committee?

A. I learned they had been adopted at the American Legion Hall at Richmond the night before. I don't know whether it was the Steering Committee or who it was by.

Q. At that time were any membership application cards passed around?

A. Not at that time, but we were told about them.

Q. Did you receive any instructions at that meeting as to how those membership application cards should be signed?

A. Yes, sir.

Q. And how members should be solicited?

A. I don't remember about the soliciting part, but Tatem made the statement that none of those cards were to be signed on company property or on company time, and 25 cents was to be collected when each card was signed.

Q. Was it a single card at that time, approximately three or four inches long, or was it a card, say, about seven or

3903 eight inches long and perforated in the corner?

A. On the 16th of June?

Q. Yes.

A. I didn't see a copy then.

Q. Where did you see it?

A. 18th of June.

Q. What type of card was that?

A. It was a card, that is in evidence here, perforated in the middle.

Q. Perforated in the middle?

A. Yes.

Q. I show you what is in evidence here as Board's Exhibit No. 26, and ask you if that is the type of application card that you saw on June 18, 1937.

A. That is the type of it; yes.

Q. And did you sign such a card around June 18, 1937?

A. On June 18th or 19th.

Q. I believe you testified that you signed that card at your home.

A. Yes, sir.

Q. Who asked you to sign it?

A. Didn't anybody ask me to sign it.

Q. Where did you get the card?

A. Brown gave me about 25 of them, I guess.

Q. And you got other employees to sign those cards?

3904 A. I didn't get them to sign them. I had them if they wanted to sign them. I didn't beg anybody to sign them, though.

Q. You did not make any secret of the fact that you had those cards?

A. I didn't make any secret of the fact I had the cards, but I didn't advertise it, either.

Q. Did you not approach any employees and ask them to sign those cards?

A. I didn't ask any man to sign one of those cards at that time.

3907 Q. Well, after June 2nd, did you ask any men to sign?

A. After June 2nd?

Q. The 22nd.

A. I never asked anybody to sign a card until after the contract was signed on August 5th.

Q. Well, after the contract was signed, you did request the employees to sign those cards, did you not?

A. Yes, sir.

3908 Q. Referring to the meeting of June 22nd in the Blair High School, how were you advised of that meeting?

A. I don't remember right now. It seems to me on the 16th of June that two or three men were asked to see if they couldn't get that place and what date they could get it, and it seems to me like they were to notify Brown, and he told me.

Q. Well, was the meeting advertised any in the papers?

A. I don't remember seeing it in the paper.

Q. Were there any pamphlets or circulars distributed to the men in regard to the holding of that meeting on June 22nd?

A. I never saw one.

Q. Were any notices posted on any of the company bulletin boards?

A. I never saw one.

Q. Did you yourself notify any of the linemen to attend that meeting, or that there would be a meeting on that night?

A. I notified most everybody I saw, I think.

Q. And did you tell them to pass the word along, too?

A. I don't remember that I told them to pass the word along. We were all there in one group, and we would see each other practically every day.

Q. At that meeting on June 22nd, who presided?

A. Mr. D. M. Tatem.

3909 Q. Mr. White was present, your counsel?

A. Mr. White was present; yes, sir.

Q. At that meeting of the 22nd, Mr. White discussed the constitution and bylaws, did he not?

A. He read it and answered questions, but before he read it Mr. Tatem requested anyone working for the company that was a supervisor or foreman or above that grade, should please the room.

Q. Do you recall that anyone did get up and leave the room?

A. I don't recall; no.

3910 Q. Now, when Mr. White started off, was he introduced to the employees present by Tatem?

A. As best I can remember; yes.

Q. And was he introduced as the attorney for the I. O. E.?

A. I don't remember about that now. I expect he was, though, because it was pretty well advertised that the I. O. E. attorney was going to be down there.

Q. Now, I show you Board exhibit No. 36, which is a copy of the constitution and bylaws of the I. O. E., and showing you that exhibit I ask you if Mr. White read the entire set of constitution and bylaws.

A. I would think he did. At the time I had one of them myself, and had already read it before he read it up there, and I am pretty sure he read the same thing as the copy I had.

3911 Q. How long did it take Mr. White to read the constitution and bylaws?

A. I don't know. It didn't take so awful long. We were in the meeting about two hours, I guess.

3914 Q. Were there any changes suggested in the constitution and bylaws in the meeting of June 22, 1937?

A. I don't remember any.

Q. How many men were present at that meeting?

A. I don't know about that. There was a good crowd

3915 there though.

Q. Would you say between 150 and 200 people were present?

A. There were more than that there. I would say that there were more than 500 people there.

Q. Would you say between 500 and 700?

A. I would guess that; yes, sir.

Q. Approximately how long did the discussion on the constitution and bylaws last?

A. Well, I don't know about that. I think the discussion was along at different times in reading the constitution and bylaws. Then, after it was all read they asked if there were any more questions.

Q. Were there any changes suggested in the constitution and bylaws?

A. I don't remember any.

Q. Was there any vote taken at that meeting on June 2nd on the constitution and bylaws?

A. No, sir.

3924 Q. What is your best recollection of how many members in the distribution department at the Cove Street plant were members of the I. O. E. on August 5, 1937?

A. All but about 16 or 17.

Q. Then on July 2, 1937, you had elections for the purpose of determining who would be the representative for the Norfolk Distribution Group? Is that correct?

A. No, sir.

Q. For the Norfolk Division, then? Is that right?

A. No, sir.

Q. What division was it?

3925 A. We didn't have any election on July 2nd.

Q. That is when you had the nominations, isn't it?

A. That is right.

Q. For what division?

A. Distribution and construction.

Q. I believe you testified that the two men receiving the highest number of votes would then have an election to determine which one of them would represent the distribution department in Norfolk?

A. The Norfolk Division.

Q. The Norfolk Division?

A. That is right.

Q. Where did you obtain your ballots and nomination blanks and envelopes which were introduced as Intervener's Exhibits 12, 13, and 14?

A. I think they came from No. 202 Monticello Arcade, the temporary offices which had been rented by the organization at that time.

3926 Q. I believe you stated that on July 2nd you were having a nominating election, and that the box was on the street in front of the Cove Street plant and was there from 7:15 o'clock in the morning until five o'clock in the afternoon. Is that right?

A. No, sir. I didn't say that.

Q. What was it?

A. It was there from 7:15 until eight o'clock.

Q. And then it was taken in?

A. I don't know where it was taken then.

Q. Who had the custody of the box?

A. I think after I left there it was left in the custody of P. D. Brown.

Q. Was the box open all day from 7:15 o'clock until five o'clock that evening?

3927 A. It never was open until we started to count the ballots.

Q. I don't mean open, but I mean could a man come in there at eleven o'clock in the morning and cast his vote?

A. I don't think so. It was not supposed to have been like that.

Q. Where did you get that box?

A. That box came from a grocery store about a block and a half from my home.

Q. Did you get it?

A. I did.

Q. Did you fix it up as an election box so you could drop the ballots into it?

A. I brought it down to the plant as I got it from the store, and Paul Brown and I go down the street and put tape on

3928 it and marked it "election box" or "nomination box".

Q. You always carry tape as part of your equipment, do you not?

A. It was some kind of adhesive tape. I don't know whether I had it or whether Brown had it. It wasn't company tape, if that is what you mean; that is, the black friction tape.

Q. You know that might indicate that the election would be dominated by the company if the company furnished the tape, didn't you?

A. No. I think we didn't want any black tape on the box.

Q. Who were the other watchers?

A. I don't even remember right now. I think W. P. Winslow was one of them, and A. R. Griffith. I don't know, but it seems to me they had five of them. It seems like R. F. White was one of them.

Q. Who decided to have this election July 2, 1937?

A. That was decided by the steering committee. That was my understanding of it.

Q. Was there any campaigning on as to different employees trying to get votes so that they could get on the nomination ballot for the election?

A. Not that I know of.

Q. Did you know of any campaigning then, Mr. Faust?

A. Not until after July 2nd.

3929 Q. And then on July the 12th, was it, you had an election?

A. Yes, sir.

Q. And you won that election?

A. Yes, sir.

Q. Now, was it generally understood by the men at Cove Street that the purpose of this election on July the 12th was to elect a representative to the general committee?

A. No, sir.

Q. Well, it was just for the purpose of designating a representative?

A. Designating the representative to the electric division committee and the Norfolk interdepartmental committee.

Q. Under the constitution and bylaws of the I. O. E., is that right?

A. Under the constitution and bylaws of the I. O. E.

Q. And was it ever explained in any way; that is, by posting of notices or by holding of meetings, as to the authority that this representative would have that would be elected by the men?

A. Well, that was up to the steering committee to explain that.

Q. Well, now, do you know if the steering committee ever made any such explanation to any of the men at the Cove Street plant?

A. It was explained to me. I do not know how many more.

3930 Q. And how was it explained to you?

A. From Mr. P. D. Brown and by reading the constitution.

Q. Now, were many copies of the constitution available for the employees at the Cove Street plant?

A. I do not know just how many. I think I accumulated about three or four myself.

Q. How did you happen to get three or four?

A. Well, some of them—one of them was given to me at the office up there, and one or two—it seems to me like there was two given to me at the time the card was given to me on the 18th of June.

Q. You say two were given to you in the office. What office do you mean?

A. 202 Monticello Arcade.

Q. You mean the office of the I. O. E.?

A. The temporary office.

Q. It was not the office of the company that you got the constitution at, was it?

A. No, sir.

3931 Q. Well, how did you get on the general committee?

A. I was elected by the Norfolk branch of the electric division committee.

Q. Well, anyhow, on July the 13th you were a member of the general committee.

A. On July the 13th I was.

Q. And what happened to the steering committee?

A. The steering committee was dissolved on the night of July the 13th; disbanded and told to go home.

Q. The steering committee had done what?

A. They were dissolved, disbanded, and told to go home—all those that had not been elected.

3932 Q. Well, there were a number who were on the steering committee who were also elected to the general committee, isn't that right?

A. I think so.

Q. And the steering committee had the election for the purpose of having a general committee which would take over from the steering committee, isn't that right?

A. The steering committee was supposed to be dissolved as soon as the elections were held. The steering committee had nothing to do in the world with electing the general committee.

Q. Well, the steering committee was the one that had the election held?

A. They had the election held for the representatives for the divisions and for the interdepartmental committee. The inter-

departmental committee was the one which dissolved the steering committee before the general committee was even elected.

3933 Q. But the steering committee did function up to the night of July 13th, when the general committee had been elected and the representatives appeared, is that right?

A. The steering committee was dissolved before the general committee was elected.

Q. How long before?

A. About five or ten minutes, fifteen or twenty minutes, something like that.

3935 Q. Now, with respect to the proposed agreement that you were discussing at Ocean View, did you, say, bring in suggestions from the men working in the distribution department at Cove Street?

A. Yes, sir.

Q. And you had attended a meeting of the Cove Street men before you became a member of the general committee, hadn't you?

A. I had been elected as a representative on the electric division committee.

3936 Q. And it was between the time you were elected and before you became a member of the general committee, is that right?

A. That is right.

Q. And that meeting was held on a lot near the Cove Street plant, wasn't it?

A. Yes, sir.

Q. Do you know about how many men were present?

A. I do not know about how many. I expect there was about 60 or 61.

Q. And did you ask them if they had any grievances or complaints in regard to working conditions?

A. I do not remember just what I asked them. I did not open the meeting; Paul Brown opened the meeting and told them that I had been elected as representative. From then on he did not have anything to do with it. Then I told them that the purpose of it was to try to see if we could get together on drawing up a proposed agreement.

Q. And did the men make any suggestions as to what should go into this proposed agreement?

A. Yes, sir.

Q. And were those suggestions principally in regard to higher wages?

A. Higher wages, overtime, pay on holiday, vacation.

Q. Now, was any vote taken by the men present as to what,

say, final conditions or terms they wanted to include in
3937 this proposed agreement that was to be submitted?

The WITNESS. The men were told at the opening of the meeting that the purpose of that was to try to get what they wanted in the proposed agreement, and then we have to meet with the men from Richmond in the same division. We tried to work out a scale suitable for both divisions.

By Mr. HILTON:

Q. Well, now, at that meeting did the men vote on what you should try to have included or should include in the proposed agreement to be submitted to the company?

A. Yes, sir; they voted on it.

Q. How was that vote taken?

A. By holding up the hand.

Q. Do you recall the vote?

A. I think every time anything was said about higher wages everybody voted on it unanimously, except Mr. Latham; he did not vote either way.

Q. Did anyone make any suggestions about getting time and a half overtime? That was unanimous, too, wasn't it?

A. If I remember, we had a lot of argument about time and a half overtime, and finally one suggestion was put up, and it was voted unanimously.

Q. And you just made a memorandum of what had occurred at that meeting, didn't you?

3938 A. Yes, sir.

Q. How long did the meeting last?

A. About 30, 45 minutes.

Q. Did you discuss any closed-shop provisions at that meeting?

A. No, sir.

Q. Or the check-off?

A. No, sir.

Q. As a result of that meeting, did you believe that you were authorized then to submit those terms to the general committee on behalf of the distribution department in Norfolk?

A. I did not submit the closed-shop term to them.

Q. No; I did not say that. The provisions that you were discussing eliminating the closed shop and the check-off.

The WITNESS. Will you read that again, please?

(The last two questions were read.)

The WITNESS. I do not get just what you mean yet.

By Mr. HILTON:

Q. Well, you were discussing overtime payments, weren't you?

A. Yes, sir.

Q. And did the men vote on what rate they wanted for overtime work?

A. Yes, sir.

Q. Now, what was that rate?

3939 A. Time and a half for all overtime over the regular hours, and I think it was double time for Sundays and holidays.

Q. Did you submit such a provision to the general committee on behalf of the Norfolk distribution department to be included in the proposed agreement to be submitted to the company?

A. Yes, sir.

Q. And did you believe as a result of that meeting that you were authorized to make such a proposal?

A. I thought so.

3944 Q. After this meeting at Ocean View, you then reported back to the men in the distribution department as to what had happened down there, did you not?

A. As many of them as I possible could and as nearly as I possibly could.

Q. Was any motion or resolution adopted that all the committeemen should report back to their various departments and advise them what had happened at Ocean View?

A. I can't recall that right now.

3945 Q. And you talked to the men individually, did you not?

A. That is the only way we had to talk to the men. I couldn't post notices.

3947 Q. Now, the men you talked to individually, how long was that after the meeting of the 17th?

A. Immediately afterwards.

Q. Well, you came back on Monday; is that right?

A. I came back on Monday, which I think was the 19th.

Q. The 19th?

A. Yes.

Q. And what did you tell the men in regard to this proposed agreement?

A. Well, I told them that we proposed that as a grievance set-up, closed shop, check-off, and to have some provision about termination of employment and a 50-percent increase for linemen, cable splicers, trouble shooters, and repairmen; 35 percent.

3948 I think it was, for helpers who were truck drivers, and 30 percent for everybody else.

Q. How many men did you tell that to?

A. I told it to everyone I talked to from the 19th to the 29th.

Q. How many men did you tell it to?

A. I tried to tell it to every one of them.

Q. And there were 110 in the distribution department then?

A. In Norfolk and Portsmouth; yes.

Q. Would you say you told it to a majority of the 110 men, then?

A. Yes, sir.

3952 Q. Then, on the 30th, you met with the officials of the company in regard to negotiations on the proposed agreement, did you not?

A. Yes, sir.

Q. And the first discussion was on the closed-shop provision; is that right?

A. The first discussion of the morning?

Q. Yes.

A. No, sir.

Q. It was not?

A. No, sir.

Q. What was the first discussion?

A. The first discussion was recognition.

Q. And do you know how the company happened to recognize the I. O. E. as the bargaining agent?

A. Yes, sir.

Q. Tell us how they happened to be recognized.

A. We had about 2,543 membership application cards on the table.

Q. To whom did you show those membership application cards?

3953 A. Mr. Moore looked through them himself.

Q. And examined each and every card, did he not?

A. I don't know as he examined each and every card, but he and Mr. White had already had some conversation about it before, and Mr. Holtzclaw asked Mr. Moore if he was satisfied that the I. O. E. actually represented a majority of the employees in every group.

Q. Do you know whether or not these cards, the membership application cards, had been submitted to the company at any time before July 30, 1937?

A. So far as I know they had not. They were carried up there that morning by some members of the general committee.

Q. Which part of the card, the membership application card, similar to Board exhibit No. 26, did you give to Mr. Moore, or was presented to Mr. Moore?

A. I think both of them were up there that day. I couldn't say for sure. I didn't examine them myself. I know they were over there, the cards, and I heard the count of them.

Q. Do you know whether or not the company had a list, a pay roll list, of its employees?

A. I don't remember about that. It was my understanding that it had already been checked.

Q. It had already been checked?

A. By Mr. Moore and Mr. White.

Q. And you were not in on any of those discussions or
3954 meetings; were you?

A. No, sir.

Q. Then, after you were recognized you started in on the closed-shop provision in the agreement, did you not?

A. No, sir.

Q. Well, when did that start?

A. It started after Mr. Holtzclaw had made a short talk. Then Mr. Underwood made a talk in behalf of the general committee, and then we started on some kind of stuff there. We had agreed to recognition at that time, and then some other clauses in there, something about temporary employees on construction jobs. I don't remember just exactly what it was. We had a short discussion about two or three other little things before we started on the closed shop.

3955 Q. When was it that Mr. Holtzclaw stated that the company would not enter into any closed-shop agreement?

A. That was in a little discussion before the actual negotiations even started.

Q. What did he tell you that the company would do—just refuse to enter into any agreement which contained the closed-shop provision?

A. I don't remember just exactly what his words were, but I do remember of Mr. White telling him that we were going to have to insist on a closed shop.

3956 Q. Did Mr. Holtzclaw say he had always been opposed to a closed-shop agreement?

A. I don't recall that he did.

Q. One of your arguments, or one of the arguments of your committee, was that the closed-shop provision would get members for you; I mean to have all the members, inasmuch as you were getting benefits for all of the employees.

A. I don't think I argued anything like that.

3957 Q. I am not saying you, personally, but I say the committee. Wasn't that one of the arguments that was advanced by the committee?

A. Not exactly.

Q. What argument did this committee advance?

A. The argument was that if we received any benefits through any organization that 2543 men ought not pay the dues for the other 200 or 300 and for them to receive the same benefits if we did receive any.

3959 Q. At any times during these negotiations did your committee threaten to strike in the event your demands were not met?

A. No, sir.

Q. And you know under your constitution and bylaws you could not call a strike?

A. I didn't know it. But so far as I was concerned, it didn't make any difference; I didn't see any reason why we should strike.

Q. In the event the company refused to give you a closed shop agreement would you have been willing to go on strike to enforce that demand?

A. I don't suppose we would have accepted the agreement.

Q. What would you have done? Would you have just dropped it?

A. We would not have dropped it. We would have called in the National Labor Relations Board and tried to get something fair.

Q. You mean in the event that you could not enforce your demands? In the event you could not enforce any of the demands that you were making on the company you mean you would have called in the National Labor Relations Board to help you out? Is that right?

A. We had talked about that; yes.

Q. Who talked about that?

A. The general committee.

3960 Q. Did the General Committee have the advice and the counsel of Mr. White at that time?

A. Yes, sir.

3963 Q. And you never seriously pressed your demand for an additional increase in May 1938, did you?

A. We never had a chance yet.

Q. You permitted the notice of termination, as provided for in the agreement, to expire and the agreement automatically renewed itself?

A. Yes. But all of that came up since May 9th when we received information it was coming up.

Q. You could have extended the time?

A. We were afraid of losing it.

Q. You didn't want to lose the 27½ percent increase, did you?

A. We didn't want to lose that closed shop either.

Q. Why didn't you want to lose the closed shop?

A. For the same reason we wanted to get it.

Q. You mean if you lost your closed-shop provision you would lose all of your membership?

A. No. We would have some members who would not come in and who would sit around and do more squawking than anybody else but get the same benefits but not pay for them.

3966 Q. Isn't it a fact that you were afraid the I. B. E. W. might enter into or force an agreement on behalf of Cove Street with the company?

A. I didn't; no.

Q. And you wanted to play safe by being on both sides?

A. It wasn't a matter of playing safe. I just felt that if we were going to have any kind of an organization we ought to have a good one; and if the majority signed up with the I. B. E. W. I would have been in there yet.

3970 Q. I direct your attention to page 6 of Board's exhibit No. 36. The first paragraph on that page states that "no contract agreement shall be executed relative to wages, rates of pay, hours of employment, and conditions of work affecting the members of the organization or any voting division of the organization until the provisions of the contract affecting the members of such voting division shall have been approved by the members of such voting division." After you had agreed to this contract around August 1, 1937, did you submit that to the division committee?

3971 A. Yes, sir.

Q. Did you submit it to the men, to the employees working in the Norfolk Distribution Department?

A. According to the constitution we were supposed to submit it to the Division Committee, which we did on the first day of August. And between the first and 5th of August I again tried to go to every individual and tell them what was in that agreement. And there wasn't a one of them that said not to sign it, either.

Q. Did you tell them practically everything that was in that agreement?

A. I came as near to telling them everything there was in there affecting the distribution department as I could.

Q. Approximately how many men were in the distribution department at that time?

A. Approximately 119 at Norfolk and Portsmouth.

3975 Q. Well, now, how about on bargaining? Can anyone else bargain on behalf of the I. O. E. other than the general committee?

A. According to the constitution, that is who is supposed to bargain, but the other representatives all helped to bargain last year.

Q. How did they help?

A. They were in there.

Q. You mean you brought some of these men from the divisional committees?

A. Some of the men from the division committees, yes; in fact, all of them were there.

Q. Was that just to make them feel good and important?

A. No; I do not think it was that.

Q. Well, did you need their advice and counsel in regard
3976 to any of the provisions you were negotiating?

A. We asked them.

Q. Were they with you all day while these negotiations were going on?

A. Not all day every day; all day Sunday.

Q. Well, Sunday you had agreed to all the terms in this contract.

A. Sunday we had not agreed to anything.

Q. Sunday you had not agreed to anything?

A. No, sir.

Q. Isn't it a fact that you had agreed on hours, wages, check-off, and closed-shop provision on Saturday night?

A. We had come to an agreement as far as the committee could go.

Q. And then Sunday you just met to have the agreement typed up and decide on the language to be used?

A. We agreed on the language to be used. If the division committees had decided they did not want that contract, there would not have been a thing in the world the general committee could do but go back and bargain some more.

Q. And in the event the division committee did approve the contract, it would go into effect, wouldn't it?

A. Not until it was signed.

Q. I mean if they approved the tentative agreement, which they did, that was the end of it, wasn't it, as far as the
3977 I. O. E. was concerned?

A. Actually; when you take a strict interpretation of the constitution; yes.

Q. And if the men, say, in the distribution department, did not want the agreement, they could not set it aside, could they?

A. They could throw the representatives out.

3981 Q. All right, and what else?

A. And the election of representatives.

Q. Well, now, I believe you stated that you received a complaint from the I. B. E. W. men that the I. O. E. committees were not meeting; is that right?

A. I did not think it was a complaint at the time I received it.

Q. Well, a suggestion, then?

A. A suggestion, yes.

Q. And you had had only two meetings since the contract was signed up to the time that the suggestions were made by the I. B. E. W. men?

A. Two is all I remember right now.

Q. And then after that you did hold meetings—was it every first and third Thursday?

A. Every first and third Thursday.

Q. And you have continued to do that?

A. I have continued to do that. That was not my action. That was action taken at a meeting, a special meeting, that I called for the purpose of the fellows themselves to find out when they wanted to hold meetings and how often.

3995 Mr. WHITE. Now, Mr. Examiner, you asked me to have prepared a list of the men who attended the meeting on May the 24th in Norfolk addressed by Mr. Throckmorton.

I have also prepared a list of those who attended the Richmond meeting addressed by Mr. Holtzclaw. It is possible
3996 that this list is incomplete, inasmuch as I am informed that there were a lot of people, or some people, who attended the meeting who were not sent there by anybody but who went there for the purpose of curiosity. This is a list of those, so far as I have been able to ascertain, who had not been delegated by the various groups to attend the meeting.

Trial Examiner FORT. How did you check them, Mr. White?

Mr. WHITE. The Norfolk list was checked in each case with the men who represented the people themselves. We checked them and got the complete list that way.

Now, I would like to explain, for example, that Reeves Avenue has an enormous bunch of men here. I think 18 men that attended that meeting. In explanation I will say that it will appear in evidence that they had no representatives, but the notice of the change-over came so late that somebody got on the telephone, and they just passed the word around. Nobody was actually delegated to go, but this bunch went for the purpose of curiosity.

I ask to have these introduced as Intervener's exhibit No. 20-A and 20-B and received in evidence.

Mr. HILTON. 20-A will be the Norfolk list?

Mr. WHITE. 20-A will be the Norfolk list and 20-B the Richmond list.

Trial Examined FORT. It will be received.

3997 (The documents above referred to were marked "Intervener's exhibits 20-A and 20-B" and received in evidence.)

4001 By Mr. LATHAM:

Q. There has been a great deal of talk on the stand about a proposition of wanting a 40-hour week and being
4002 paid for 44, and that it came up in the I. O. E. meeting.

later voted down, and voted up again. How is it that that sort of thing can be voted down and brought back up again in the organization of the I. O. E.?

A. Well, so far as it being voted down, I did not have anything to do with that, but I just told them if that is what they expected me to do, to ask for 40 hours and try to get our wages up, that I just could not do it. So any action voted down or any action voted up was on their own initiative. I had nothing to do with it.

Q. But you were the regular elected delegate to take those matters up?

A. I was the regular elected delegate; yes, sir.

4005 Q. Does the company union maintain a board for posting notices?

A. No company union; no, sir. The independent organization may maintain a board for it.

Q. I beg your pardon. Who made that board?

4006 A. I don't know.

Q. Did you see the board made?

A. I ordered it made; yes. I asked a man to have it made for me.

Q. Whom did you ask to have it made?

A. Mr. A. C. Cartlidge.

Q. Where at?

A. I asked him in the office up in the Monticello Arcade to make it for me.

Q. Do you know where he had that board made?

A. No, sir.

Q. Are you absolutely sure you do not know where it was made?

A. I am absolutely sure of it; yes, sir.

Q. Have you ever heard where it was made?

A. No, sir.

Q. Was the board delivered to you or did you go after it?

A. The board was delivered to me.

4039 By Trial Examiner Fort:

Q. You are the ranking man in the organization, aren't you, as chairman of the general committee?

A. Well, I am the chairman of the general committee, but the chairman of the general committee does not have much power.

Q. Who ranks in the organization higher than you do?

A. Well, there is nobody who ranks higher in the organization than I do.

Q. That is what I am trying to find out. I want to find

4040 out whether or not you are the actual head of the organization.

A. Yes, sir.

Q. Now, let me get clear as to just what the organization could or ought to do for the men at this time.

A. Well, I think we need an organization to iron out any difficulties that we have, whether individually or collectively, and to have some way that we can bargain with the management for different rates of pay and overtime and other things like that.

Q. You think it is just a convenient method of doing the bargaining?

A. Yes, it is a convenient method of doing the bargaining.

Q. In the testimony of Mr. Holik, I believe it was, you presented Harrell's grievance, I believe, you or your organization.

A. The organization did; yes, sir.

Q. And, as I recall his testimony, he stated that he refused to accept the grievance.

A. I understood him to say that he told the men that he did not even consider that as a grievance, and then he went on to explain why.

Q. That is true. Did you take any further action on it?

A. No, sir, I did not take any further action.

Q. Well, after you presented the grievance, and he told
4041 you that he could not even consider it as a grievance, you stopped right there?

A. We had a perfect right to carry it further.

Q. I want to find out why you did not carry it any further.

A. We were not asked to.

Q. You mean Harrell did not ask you to carry it further?

A. He never asked me to carry it any further.

Q. Did you tell him you would quit?

A. No, sir.

Q. You did quit, though.

A. I will tell you what happened about that. I came down one morning and made a report to him. He did not request then that it be carried up; and then at the next meeting, which I think was April the 7th, we brought the grievance up and discussed it, and he said he did not think very much of the grievance that was put on there—that was put on the paper; and so I told him the reason—I told him before the reason as it had been explained to me, and I told him I would tell him again what had been explained to me if he wanted me to, and he said no, there was no need of doing that; he heard it one time. And as far as that grievance, I never heard of it again.

Q. You do not have to take a grievance up unless the aggrieved person requests you to?

A. No, sir.

4042 Q. If you have a grievance, and the person who is aggrieved, who is complaining, asks you to present it, and you present it to the company official, and he declines to act on it favorably, you just drop it then unless the individual requests further action?

A. The grievance committee takes it up first. The grievance committee tries to adjust the matter, and if they cannot adjust it satisfactory to themselves, then they turn it in to the division committee, and we take it on higher without the recommendation of the individual; but if the grievance committee investigates the case and finds out to their mind it is not a grievance, then it is up to him.

Q. Then, as I understand it, from your statement, the grievance committe was satisfied that there was no merit in Harrell's case?

A. Well, the thing that the grievance committee was interested in was whether he was discriminated against in the selection for the layoff.

Q. Well, he was not a junior man, was he?

A. I do not think he was a junior man; no, sir.

Q. And he was laid off?

A. He was laid off.

Q. Now, what I want to get is the attitude of your organization on that discharge. Mr. Holik testified that he refused to consider it as a grievance, and you just accepted that without insisting that it was a grievance?

4043 A. Well, after Mr. Holik told him why he did not consider that as a grievance——

Q. He told you that?

A. No, sir; he told Knight.

Q. I mean he told your organization.

A. They did discuss it, and after Knight and the grievance committee got Mr. Holik's reasons as to why he was picked, then they were satisfied that he was not discriminated against.

Q. Then, they concurred in the company's decision?

A. They brought it back to me in Harrell's presence, and he did not say anything about carrying it higher; so when the grievance committee had satisfied themselves that it was not a just grievance, and he did not insist on carrying it any further, I could not do anything with it.

Q. Well, did they express that to Harrell, that that was their conclusion?

A. They gave him a letter. I do not remember just what the letter was. I think it is in evidence here. They said there was nothing they could do about it.

Q. I mean did they tell him why they could not do anything with it, or did they say, "Well, we do not think there is anything to your grievance"?

A. I told him.

Q. You did tell him that?

A. Yes, sir.

4044 Q. You did not expect him to go any further with it after that, did you?

A. Well, I had a right to. I told him——

Q. I did not ask you whether you had a right to. Did you expect him to go on with the grievance after that?

A. I certainly did not. After the reason was given to me I did not expect him to carry it any further, but I would have carried it if he insisted on it.

4054 Q. Of course, Brown will be on the stand, I guess, and we will get more information from him about it. I think you said that White gives about two hours' work to one man, and a little bit more to another man; is that right? Is that the man?

Mr. Hilton. Yes.

By Trial Examiner Fort:

Q. Is he a kind of handy man around the whole place?

A. He is a kind of clerk around the office for everybody. He does work for Mr. May, the general foreman there; he helps the timekeeper; he helps make requisitions for stock and store room; he helps Mr. McFall with regard to the stuff that he has to prepare—letters, and stuff like that.

4055 Q. Well, that is what I mean—the independent organization. You occupied more of a leading representative capacity than any other man, with the possible exception of Brown, from your units, from your section of the employees?

4056 A. Well, the only thing that I did was attend some of the meetings and come back and tell the fellows what actually happened.

Q. When did you first see the constitution and bylaws of the I. O. E.?

A. I think the first time I saw the constitution was on the 18th of June, but I heard it discussed some on June 16th.

Q. When was it read to the employees generally?

A. Read to the employees generally on the 22nd of June.

Q. Did you have any part in the formation of either the constitution or the bylaws?

A. No; I didn't have any part in the formation of them.

Q. Did the men that you represented have any part in that?

A. No; not as I know of, except P. D. Brown.

Q. Had P. D. Brown been selected to do that?

A. Yes, sir; he was selected as chairman up there on that day of May 26th.

Q. The day of the second meeting?

A. Yes, sir.

Q. He was chairman of what?

A. He was supposed to represent that whole plant down there, the Cove Street plant, in the matter of forming an
4057 organization, or whatever happened.

Q. Now, how was that action taken? Did you have a vote of some sort or a record of that meeting that shows that sort of authority given to him?

A. The minutes show that he was elected chairman. It doesn't show a vote.

Q. Does it show what authority he was to have?

A. I don't think so.

Q. I thought the May 26th meeting was the one where they determined what kind of an organization they wanted.

A. We determined on what organization we wanted, elected P. D. Brown and N. F. White, as secretary of that whole group—P. D. Brown, chairman, N. F. White as secretary. Then, just as the meeting adjourned, that petition was signed.

Q. Have you any indication as to just what the authority was, in the way of a minute or resolution, that shows what authority they were given to organize the new association?

A. I don't know as there is.

Q. Well, is there one in existence that you know of, at all?

A. No, sir.

Q. Was there a definite motion made at this meeting to the effect that they were to be given the right to negotiate or organize an association, and did the men vote on such a proposition?

4058 A. Well, they voted on what kind of an organization they wanted, and then he made some talk—something about some backing, or to show the other members of the committee just how many men he represented. I don't know just what it was, but I do remember, though, at the next meeting, which was supposed to be the 1st of June, the men were supposed to have something there to show who they represented before they started forming any kind of an organization.

Q. That they were supposed to have a meeting, but I want to find out what the men understood before they went to that meeting.

A. The men understood that the majority of them wanted an independent organization.

Q. Well, was it clear and definite that they wanted Brown to fix it, to represent them in doing that?

A. Well, it looks like it was.

Q. On what do you base that, now? What action was taken by the men there that would authorize him to act for them in organizing a union?

A. They elected him as chairman. Then they signed that petition. I don't remember just what the heading of it is, now, but it is something—I don't remember just what it was.

Q. That is Respondent's Exhibit No. 13 ——

Mr. Moore. I think it will clear it up if you show the
4059 witness this Exhibit 3–C. There are just a few lines typed at the top, and it says: "We, the undersigned, desire to elect Paul Brown as chairman of our department to represent us in collective bargaining."

Mr. Hilton. That is Intervener's Exhibit No. 3–C.

Mr. Moore. That is right.

Trial Examiner Fort. Intervener's Exhibit No. 3–C.

By Trial Examiner Fort:

Q. After seeing that now, can you indicate to me how a man could understand that he was to form an organization? It says they are to represent them in collective bargaining. What suggestion is there that some organization is to be formed?

A. Well, the thing we were talking about up there was forming an organization and to find out what kind of an organization we wanted, and it was understood that anybody could vote any way they wanted to, whether it was for the A. F. of L. or the C. I. O. or an independent organization, and it was explained that the independent organization was collective bargaining. Then they had a vote on it, and the majority voted for collective bargaining, and then the petition was signed, and I understood it that Brown was supposed to be the man that would see what was going to be done about it.

4063 Q. Mr. Faust, I believe you said you didn't know anything about the arrangements for the meeting of May 26th, how they were made or who got permission to use the garage, and just what took place in that regard?

A. No; I don't know anything about that, Mr. Examiner.

4064 Q. Were they the next two meetings after that that were held in the Virginia Electric and Power Company building?

A. I attended one after that.

Q. There were two held in the Virginia Electric and Power Company Building, were there not, the next two succeeding meetings?

A. I wouldn't say for sure, Mr. Examiner. I did attend one there on the first of June.

Q. What part of the building was it in? Was it in the public part of the building or the part that is used by the company?

A. It was an assembly hall they use up there for demonstrations and things of that sort. It was an auditorium.

Q. Do you know how that was obtained?

A. No, sir.

Q. There was no statement made about who granted permission to use it?

A. I don't remember any; no, sir. At the meeting on the 24th the group up there decided to meet up there again on the 1st of June and to bring credentials as to who they represented or who they were or how many men they represented.

Q. You mean the meeting of May 26th?

A. The meeting of May 24th on the 6th floor.

Q. After Mr. Throckmorton's talk?

A. Yes, sir.

4066 Q. Did I understand you to say that you found no discrimination as to these 13 men who were discharged on March 31st last?

A. No, sir. To tell you the truth, I don't think there was any discrimination there.

4068 Q. You have been running a year now and you are confronted with 13 discharges. You either do or do not approve of them. I want to find out whether you do approve of those discharges and the method used in arriving at the selection, or whether you do not?

A. Do you mean my personal feeling?

Q. No. I mean your position as the head man in the organization.

A. As head of the organization I feel like it would have been discrimination against somebody else to take any of the others in place of the ones they did take.

Q. Then you do approve of the 13 discharges as they stand now?

A. Seeing that they absolutely had to take off 13 men.

Q. I am not questioning the necessity of dropping 13 men, but I wanted to find out your position. And I think you have already answered. You have answered that those were the right 13 selections.

A. In the classes from which they selected them.

Q. That is what I wanted to get, get your position on

4069 that. I believe you stated that you did not consider that there was any encouragement by the company in the organization of the I. O. E.?

A. No, sir. I don't think there was.

Q. You do not consider the use of their public buildings and halls—By the way, was there any charge for any of those halls that you used in the Virginia Electric and Power Company Building; that is, the Assembly Hall or the Garage?

A. I don't know anything about that. But the way I looked at it, the I. O. E. was not formed until the constitution was adopted on June 15th. And I have not attended any meeting on company property since then, and I don't know that anybody else has.

Q. Then you do not think the action of the company prior to that time would have any bearing on the company organization?

A. Yes; I do if they had taken any action as to trying to form a company union or independent organization or I. B. E. W. or C. I. O. or anything else; that is, if they had taken any action trying to form it.

Q. Then you do not think the use of the company buildings was an encouragement in the organization of the I. O. E.?

A. I don't even know if they knew that the fellows used the company buildings or not.

4071 Q. You doubt whether they knew you were going to use that garage on May 26th or whether you did use it?

A. We did use it.

Q. Do you have any doubt about their knowing you used it?

A. I do.

Q. You would have serious doubt?

A. I heard Mr. Holik say the other day he didn't know anything about it, and nobody asked him for his permission. I don't know whether any of the rest of them knew it or not.

4074 The WITNESS. I would like to make a statement, if I
4075 may, Mr. Examiner.

Trial Examiner FORT. Go right ahead.

A. When all of this stuff started I didn't know anything about any labor organization or anything else. Then I began to hear a lot of rumors about what they were going to do in the Transportation Department and what was going to happen, so, naturally, I heard the I. O. E. condemned right much.

After I was elected representative I made the statement that I was going in there and I was going to do the best I could, and if there was anything in there that looked like the company had anything to do with it, I was going to get out of it and everybody was going to know it.

So I went on and did the best I could as representative, and I got fairly mixed up with the organization and all the com-

mittees and I felt after I got mixed up with it that we had a good organization. I still feel like it, and I still mean that any time I see any signs of company domination that I am going to quit right then.

Q. When did you reach that conclusion that you did have a good organization? What time along the way did you reach that opinion?

A. After I got acquainted with the fellows on the various committees.

Q. Referring to the calendar, when was that?

A. I would say along about October or November.

4076 Q. Then you had a serious doubt in your mind as to the bona fideness of the organization up to October?

A. I had a certain doubt as to the bona fideness of any organization.

Q. We are not talking about any organization but we are talking about this particular organization.

A. I did; yes, sir.

Trial Examiner FORT. I have no further questions.

Redirect examination by Mr. WHITE:

Q. Your attitude toward the I. O. E. was the same as your attitude toward any other labor organization at that time, was it?

A. Yes, sir.

Q. You were just trying to find out what it was all about, and you had not definitely made up your mind on any of them? Is that right?

A. Yes. I wanted to be sure we had a good organization if we had any.

4077 Q. Will you state if those are the minutes of the Inter-departmental committee meeting held at the Nansemond Hotel July 17th, 1937?

A. These are the minutes of the meeting held at the Nansemond Hotel July 17 and 18th, 1937.

4078 Mr. WHITE. I ask that this be received in evidence and marked as intervener's exhibit 16-D, E, and F.

Trial Examiner FORT. There being no objection, it will be received.

(The documents above referred to were marked "Intervener's exhibits 16-D, E, and F," and received in evidence.)

By Mr. WHITE:

Q. Mr. Faust, when you joined the I. B. E. W. did you have any meeting approving the constitution and bylaws before you went in?

A. I have never seen a copy of the constitution and bylaws of the I. B. E. W.

Q. When you signed the card going into the I. B. E. W. was the procedure any different than the procedure of going into the I. O. E.?

A. Not that I know of.

Q. During the period from the June 24th to July 13, 1937, did the I. B. E. W. actively solicit members at Cove Street?

A. Yes, sir.

Q. Did they solicit them on company property?

A. Yes, sir.

Q. Did they solicit them during working hours?

A. Well, I would not answer that for myself; I would not say for sure.

4079 Q. But they did solicit on company property?

A. Yes, sir.

Q. I hand you a pamphlet and ask you if you have ever seen one like that.

A. Yes, sir, I have seen one like that.

(Mr. White shows a paper to counsel.)

Q. Mr. Faust, where did you see these pamphlets?

A. I have seen them in several different places. One place I saw them was in the back of the truck that I worked on. One morning when I went to work I saw five or six of them laying in the truck.

Q. Was that inside of the Cove Street garage at that time?

A. Yes, sir; inside of the Cove Street garage.

Q. On company property, then?

A. Yes, sir.

Q. Did you see them anywhere else except in the back of your truck?

A. I saw some on company property—no, I would not say that I saw any more except in the back of the truck that I worked on.

Mr. White. I ask to have this filed in evidence and marked as intervener's exhibit 21.

Trial Examiner Fort. It will be received.

(The document above referred to was marked "Inter-
4080 vener's exhibit No. 21" and received in evidence.)

By Mr. White:

Q. Do you recall about the time that you saw these in the Cove Street garage property?

A. You mean the time of day?

Q. No; the day of the month, as near as you can tell.

A. It was some time along close to the time we had the meeting at the Blair Junior High School. I do not remember exactly the date.

Q. Was it prior to the election which was held to select nominees for representatives?

A. Yes, sir.

4082 Q. Now, Mr. Faust, you testified about some advice which was given to you by your counsel with respect to calling in the National Labor Relations Board in the event the company did not make the contract with you. Will you explain, if you can, what that advice was?

4084 A. Well, the advice was that—we did not know just what to do; we did not know whether it was going to be recognized or whether the company was going to bargain with us or what; we did not know just what was going to happen. And the advice that we received was that if we were not recognized as a bona fide bargaining agency for the employees that had signed up with us, we would then call in the National Labor Relations Board to prove that we were.

Q. In other words, you intended to take advantage of the provisions of the National Labor Relations Act in the event the company did not recognize the rights of the organization?

A. Yes, sir.

4087 Re-cross-examination by Mr. MOORE:

Q. Mr. Faust, as I understood you, you attended, in all, during the year 1937, two meetings in the Cove Street garage, one on the afternoon of May 24th, when you got word through your foreman that it was desired that all the men should come in, and that is the time Mr. Holik made those few remarks and some men were selected to go over to the meeting that night? That was the first meeting, was it not?

A. Yes, sir; that was the first meeting.

Q. And the only other meeting that you attended there was on the afternoon of May 26th, two days later?

A. Yes.

4088 Q. Those were all the meetings that you attended over at the Cove Street garage?

A. Yes, sir.

Q. As I understand it, you attended three meetings over at the V. E. P. Co. Building during the year 1937, and the first meeting was addressed by Mr. Throckmorton on the night of May 24th?

A. Yes.

Q. Then you attended a meeting on June 1st over there, when Mr. Elliott presented his plan with a big circle?

A. Yes, sir; I attended that one.

Q. Then you attended a meeting on June 7th?

A. No, sir.

Q. Oh, you did not? So the June 1st meeting was the last meeting you attended on company property where any of this matter was involved; is that right?

A. Yes, sir.

Q. Did you see any evidence at all in either one of the two meetings that you attended at Cove Street, or the two meetings at the V. E. P. Co. Building, of any effort on the part of the company to dominate the group or try to influence the kind of organization they should have?

4089 A. I didn't see any kind of domination by anybody. Every time I was there the group just made up their minds; there was not anybody there to tell them what to do.

Q. Now, at the meeting in the Navy "Y" on June 16th, was there any evidence whatsoever of any company domination or any effort on the part of anybody in the management, so far as you know and believe, to influence the men as to what should be done?

A. No, sir.

Q. Now, apparently, the next things in point of time that occurred here was Mr. Latham's arrival three days later, June 19th. That is the date he testified he arrived. How long had he been here before he got acquainted with you?

A. He had been here several days. I don't know just how
4090 long.

Q. How many days, roughly?

A. I would say three or four, anyhow.

Q. Did he start talking to you on the subject of whether or not the I. O. E. must be a company union?

A. I don't remember whether he started right off on that point, but he got up to it pretty soon.

Q. How long did it take him to get to that point?

A. Not long.

Q. How many days did it take him to get to that point?

A. Well, I heard that it was being rumored that it was a company union before I even talked to him.

Q. Did you have any reason from any other source than
4091 because of what Mr. Latham told you, or did you have a question in your mind as to whether or not the company was undertaking in any way to influence the men?

A. The only thing that I ever heard of company domination down there is what either Mr. Latham told me or the men that he had talked to told me.

Q. Now, what other men did he talk to that told you such a thing as that?

A. Davis, Staunton, Judge, Harrell—that many I know. I could call some more names, but I wouldn't be absolutely sure about those.

4092 Q. At the time you attended the Norfolk interdepart-
4093 mental committee meeting, or at the time you attended the meeting at Ocean View four days later, did you have any knowledge or any evidence whatever at that time that there was any effort on the part of the company, or that there had been any effort on the part of the company, to influence the formation of the independent union?

A. I didn't have any knowledge of it, but I was really watching for it.

Q. If you had any serious question in your mind about the bona fides of your organization, the good faith of it and its independence, would you have participated?

A. I would not have participated. I was in there with the
4094 intention of seeing if there was any company domination in there. I was watching for it all the time, like I made the statement to the Examiner a while ago.

4095 Q. As I understand it, in other words, you were on a sharp lookout to see if there was any evidence of that; is not that right?

A. Yes, sir.

Q. And you did not find any?

A. No, sir; I have been until now and I haven't found any.

Q. As I understand it, shortly after the negotiations, certainly, in October, your mind had been absolutely set at rest on the point?

A. Yes, sir, by October—by the last part of October, I will say.

Q. Although you had been on a sharp lookout to see if you could anywhere find any evidence of it?

A. Well, I still am.

Q. So far as you know or believe, has the I. O. E. at any time received any financial aid or other support from the company?

A. So far as I know; no, sir.

4098 Recross-examination by Mr. HILTON:

Q. * * * If the foreman went out on his own initiative and purchased these membership application cards and turned them over to your committee without any charge you would not consider that domination; would you?

The WITNESS: I certainly would consider that influence or interference.

Q. And in the event, say, that any of your foremen suggested that you form and become a member of a certain labor organization, would you consider that domination on the part of the management of the company?

4099 A. I certainly would.

Q. And in the event the company gave Mr. Underwood a few dollars to help his expenses in attending these meetings,

would you consider that in the light of a violation of Section 8-2 of the Act?

A. I certainly would.

Q. You would?

A. I certainly would, if they gave Underwood any money to attend any meeting concerning this organization.

4107 Q. Isn't it a fact that on July 29th, 1937, you had already submitted your evidence to Mr. Moore, representing the company, and that you had been recognized?

A. I didn't know that we were recognized until the next morning, July 30th.

4128 PAUL D. BROWN, called as a witness by and on behalf of the intervener, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. WHITE:

Q. State your full name and address for the record.

A. Paul D. Brown, 103 Atlans Street.

Q. Mr. Brown, what is your connection with the Virginia Electric & Power Company?

A. Cable splicer, first-class.

Q. When did you come with the Virginia Electric & Power Company?

A. August 18, 1936.

Q. Prior to August 18, 1936, where had you been employed?

A. Brooklyn Edison Company.

Q. Where was that?

A. Brooklyn, New York.

Q. What kind of position did you hold with them?

A. Laboratory technician, cable splicer, and cable splicer's helper.

Q. In what capacity were you first employed by the Virginia Electric & Power Company in August 1936?

A. As a first-class cable splicer.

Q. So that you now have the same rating that you originally received when you were first employed?

4129 A. Yes, sir.

Q. Have you been employed in the Norfolk division of the company at all times since August 1936?

A. Yes, sir.

Q. Mr. Brown, when is the first time that you heard of any labor organization activity in the Virginia Electric & Power Company?

A. May 24, 1937.

Q. You work out of Cove Street, don't you, Mr. Brown?

A. Yes, sir.

Q. Did you hear Mr. Faust testify as to what took place at the Cove Street garage on the afternoon of May the 24th, 1937?

A. Yes, sir.

Q. Does your recollection substantially agree to what he testified?

A. Yes, sir.

Q. Have you any additional facts that you can think of that he did not testify to?

A. None that I know of.

Q. I think it was testified that you appeared at that meeting equipped with lots of paper and pencils. Will you state whether you did have a number of pencils and pieces of paper at that first meeting of the 24th?

A. No, sir. I had one pencil that I always carry in the course of my work, and as for papers, I had none.

4130 Q. Did you know what the meeting was about before you got there?

A. No, sir.

Q. Who was your foreman?

A. Hunter Winn.

Q. How did you happen to be selected to go to the meeting that night at the auditorium to hear Mr. Throckmorton?

A. Well, the men in the cable department segregated themselves in the hall and designated me to go. They asked me if I would go.

Q. Was there any formal election that took place?

A. No, sir.

Q. Did you hear Mr. Holik's statement?

A. I did.

Q. Did you hear Mr. Faust's statement as to what Mr. Holik said to the men assembled there on May the 24th?

A. Yes, sir.

Q. Is your recollection any different from Mr. Faust on that point?

A. No, sir.

Q. After the meeting was over did you go down and talk to Mr. Holik about this matter?

A. I did not.

Q. Did you talk to him at all after that meeting was over on the afternoon of May the 24th?

4131 A. No, sir.

Q. What did you do after you left the meeting?

A. I walked down with Mr. Faust and went up towards the trolley and went home and changed clothes, ate dinner, and went back to the meeting at the company's auditorium.

Q. About how many people were there at that meeting that night?

A. In the auditorium?

Q. In the auditorium downtown.

A. Well, I do not know. I will say around 70.

Q. You heard Mr. Faust's testimony as to what took place at that meeting. Is your recollection substantially the same as his?

A. I think there was a little more chaos than Mr. Faust testified.

Q. I believe Mr. Faust testified that nearly everybody jumped up and started talking at one time.

A. Yes, sir. After the officials were through.

Q. Did you take any action at that meeting yourself?

A. No, sir.

Q. You do not recollect taking part in any of the discussion that was going on?

A. I do not think I asked any questions at all.

Q. What action was taken at the meeting?

A. None, except that we carried back to the men the
4132 substance of that meeting.

Q. Now, Mr. Brown, about that second meeting, that was held on May 26th, was it not?

A. Yes, sir.

Q. And where was it held?

A. Cove Street garage.

Q. And who arranged to get the garage for that second
4133 meeting?

A. I did.

Q. And with whom did you make the arrangement?

A. I asked Mr. Crafton to bring the men in on time, and inasmuch as the company had designated us to get a message, or we had agreed to carry a message back to the men, I thought I had a perfect right to have them brought in on time. Whether I asked his permission to use the garage I do not know. I believe I just took it on myself.

Q. When was that meeting held?

A. 4:30 on May the 26th, 1937.

Q. Now, prior to that meeting, Mr. Brown, had you made any definite plans as to a form of organization the men should have?

4134 A. No, sir.

Q. What took place at the May 26th meeting after you convened?

A. Well, I jumped up on a box that was there, a sand box or something—I do not just remember what kind of box it was—

and told them that we had been to hear the representative of the company, and I thought if we wanted to do anything in an orderly fashion we ought to select a chairman.

Q. Then what happened?

A. Well, somebody piped up and said, "Well, you might as well be chairman." I asked if there were any other nominations. There were none. I asked for a vote on the nomination for chairman. There was no dissenting vote.

Q. Then what happened after you were elected chairman?

A. I took this little booklet that I had from the Brooklyn Edison Company and quoted some of the benefits that were derived from collective bargaining, and asked that the men segregate themselves into groups and take a vote on what they wanted, whether they wanted a collective bargaining plan, which meant without affiliation with any outside organization, or whether they wanted C. I. O., or whether they wanted A. F. of L.

Q. Now, how was that vote taken?

4135 A. Each man—at least one man from each crew was given a slip of paper. I might state here that I carried paper to that meeting—a scratch pad. Each man was given a piece of paper and asked to put down his choice and his name.

Q. Who collected the ballots?

A. I believe there was four men collected them. I think Mr. Faust was one of them: Mr. Alexander was another one: and I believe Mr. Oakley another one; and myself.

4137 Q. Now, I hand you Intervener's Exhibit 3-A, B, C, and D, and ask you if that is a correct transcription of the proceedings of that meeting on May 26th?

A. Yes, sir; the minutes are the same.

Q. Do you remember who was secretary of that meeting?

A. Nick White, who was elected at the same time that I was—or selected.

Q. Now, Mr. Brown, in reference to the paper which was signed by various people, which has been introduced as part of Intervener's Exhibit No. 3, please state, if you know, how the typewritten memorandum at the top of the page was put on.

A. No, sir; I do not know how it was put on, but I know—or I think I know by whom it was put on.

Q. Well, by whom was it put on?

A. Well, after I took the vote for chairman, and I asked Mr. R. D. Allison to go up and get words to that effect typed on the top of a series of papers.

4138 Q. And who was Mr. R. D. Allison?

A. He was the man selected to represent the installation department, I think.

Q. In other words, he was one of the men present and participating in the voting?

A. Yes, sir.

Q. When did he go out to get this done?

A. Just after the ballots were counted.

Q. How long did it take him before he came back?

A. Approximately five minutes.

Q. He probably went to some place in the building to get it done?

A. I don't know. He had the police station, the post office, garage, or any number of places to go.

Q. In other words, you don't know whether Mr. Allison had this typed inside the company building or outside?

A. I don't know.

Q. All you know is that he brought this back to you?

A. Yes, sir; with the spaces marked in pen left blank.

Q. When were those blanks filled in with pen?

A. Just before it was given to the men to sign.

Q. What was the purpose of getting that paper signed?

4139 A. We had agreed—at least the representatives had agree after the meeting of May 24th—that we would bring some sort of proof back when we met on June 1st, I believe it was, whether we represented any men or not, and I asked for that paper to be signed by the men, so I would have something to back me up if I went to the company or if I went up to the meeting, to bring it back to the men.

4140 Q. After the May 26, 1937, meeting, what was the next meeting that you attended with reference to labor organization among the employees of the Virginia Elec-

4141 tric & Power Company?

A. I think it was June 1st.

Q. Where was that meeting held?

A. In the company's auditorium in the V. E. & P. Co. building.

Q. Did you hear Mr. Faust's testimony in respect to that meeting of June 1st?

A. Yes, sir.

Q. Was that substantially as you recollect it?

A. Yes, sir; except that I don't quite agree with the term that he gave the "big circle."

Q. You are referring to Mr. Elliott's plan and the big circle that he drew on the blackboard?

A. Yes, sir.

Q. Will you state just what is your recollection of what Mr. Elliott said at that meeting?

A. Mr. Elliott said "director." As I said, I don't quite agree with the term that he gave.

Q. Did you participate in the discussion at that meeting?

A. Yes, sir.

Q. What was your attitude toward the plan that Mr. Elliott presented to that meeting?

A. I said that piece of paper that I had in my pocket, signed by those men, would mean my neck if I ever tried to carry anything like that back to them.

4142 Q. What was your objection to Mr. Elliott's plan?

A. The salary, the absolute dictatorship, and because of not being removed except by due process of law.

Q. I gather that you are one of those, then, that opposed the adoption of Mr. Elliott's constitution at that meeting?

A. Most emphatically.

4143 Q. Mr. Brown, I show you Board's exhibit No. 19, and ask you if those are the correctly transcribed minutes of what took place at the meeting at Petersburg on June 3, 1937 [handing the exhibit to the witness].

A. (After examination of the exhibit.) Yes; I think that correctly interprets it.

Q. How did you happen to go to that meeting, Mr. Brown?

A. I got word through Mr. Tatem that there would be a meeting held in Petersburg that night.

Q. Where was that meeting held?

A. In the power company's building in Petersburg.

Q. In the Virginia Electric & Power Company's building in Petersburg?

A. Yes, sir.

Q. Who arrived after you all got there?

4144 A. Mr. Underwood, Mr. Bertolet, and some other gentleman—I don't remember his name—Mr. Elliott, Mr. Hough, Mr. Nickerson, and I don't remember the rest of the names.

Q. Now, Mr. Brown, what was the main discussion at the Petersburg meeting, if you recall?

A. The topic of main discussion to my mind was the employing of an attorney.

Q. Was there any discussion of Mr. Elliott's proposed plan of organization at that meeting?

A. Yes, sir.

Q. Did he advocate that it be adopted by that meeting?

A. I believe he did.

Q. What was the attitude of the other representatives attending that meeting from Norfolk?

A. Not very much in favor of it.

Q. What was the attitude of the Richmond representatives, as you recall it?

A. Towards Mr. Elliott's plan?

Q. Yes; towards Mr. Elliott's plan.

A. Well, it was not at all in favor of it.

4146 Q. Was the committee which was designated to select an attorney instructed as to any particular plan of organization which should be followed in drawing up the constitution and bylaws?

A. I don't know whether they had any specific orders.

Q. Were they instructed to have drawn up a constitution and bylaws for an independent organization?

A. Yes, sir.

Q. How long did that meeting last?

A. I think around two hours and a half—possibly three hours.

Q. The only definite action taken at that meeting, according to your recollection, was that a committee was appointed to try to retain an attorney at some neutral point; is that right?

A. Yes, sir.

Q. For the purpose of drawing up the constitution and bylaws?

A. That is right.

Q. Did anybody bind themselves to anything that night?

A. No, sir.

Q. When was the next meeting that you attended?

A. I think I called in the various representatives at Cove Street—at least I called them together and had a talk with them, and told them what had taken place at Petersburg

4147 the previous night.

Q. In other words, you made a report to the men at Cove Street as to what had taken place at Petersburg?

A. Yes, sir.

Q. I hand you Board's exhibit No. 20—and I believe a similar copy has been introduced as intervener's exhibit No. 5. This seems to be the minutes of a meeting held at Norfolk, Virginia, First and Duke Streets, on June 7th. I will ask you if you attended that meeting.

A. Yes, sir.

Q. Will you please look at these minutes and see if they correctly record what took place at that meeting [handing the exhibit to the witness].

A. (After examination of the exhibit.) Yes, sir.

4149 Q. I now hand you a paper, which has been introduced in evidence as intervener's exhibit No. 6, and which appears to be the minutes of the meeting of June 11, 1937, on the sixth floor of the Virginia Electric & Power Company building. I ask you if you attended that meeting [handing exhibit to the witness].

A. (After examination of the exhibit.) Yes, sir.

Q. Do those minutes correctly record what took place at that meeting?

A. I think so.

Q. Mr. Brown, what consideration was given at that meeting to the constitution referred to in those minutes?

A. I believe they agreed to furnish us copies of them, so that we could let the men look them over.

4150 Q. Mr. Brown, I hand you Intervener's Exhibit No. 7, being the minutes of the meeting of June 16, 1937, held at the Navy Y. M. C. A., and I will ask you if you attended that meeting?

A. I attended one at the Navy Y. M. C. A.

4151 Q. Now, Mr. Brown, please state whether or not those minutes record correctly what took place at that meeting at that time.

A. Yes, sir.

Q. Prior to this meeting had you attended any other meetings of the employees of the Virginia Electric and Power Company?

A. Yes, sir. I think I had attended one the night before in Richmond.

Q. Mr. Brown, I hand you a paper dated June 15, 1937, apparently the minutes of a meeting held at the American Legion Hall in Richmond, and I will ask you if you attended that meeting?

A. I attended that meeting.

Q. Now, Mr. Brown, will you please look at those minutes and state if they record correctly what took place at that meeting?

A. Yes, sir. That, to my mind, was the most important meeting we ever had.

Mr. WHITE. Mr. Examiner, I will ask that this paper be received in evidence and identified as Intervener's Exhibit No. 22.

Trial Examiner FORT. There being no objection, it will be
4152 received as Intervener's Exhibit No. 22.

(The document above referred to was received in evidence and marked "Intervener's Exhibit No. 22.")

By Mr. WHITE:

Q. Mr. Brown, you have stated that this was one of the most important meetings you ever held?

A. Yes.

Q. Why do you say that?

A. That was the night we got together with the Richmond committee on the formation of our constitution and bylaws.

Q. Up until that time had there been any real organization of employees of the Virginia Electric and Power Company?

A. Not to my mind; no, sir

4153 Q. And you were acting under the authority of that petition which was originally signed when you went to Richmond to this meeting?

A. Yes, sir.

Q. As a matter of fact, Mr. Brown, did your action in approving the constitution and bylaws at the meeting of June 15th mean anything unless the men you represented chose to join that organization?

A. Absolutely not.

Q. How was the constitution adopted at that meeting on the night of June 15th?

A. Each paragraph in its then wording was gone into and changes were suggested and were put into it. I know that I argued for about 20 minutes or a half hour to get three words into it.

4158 Q. So, as a matter of fact, all of the steering committee there voted that night to adopt this constitution which you have identified as Board's Exhibit No. 36?

A. Yes, sir.

Q. Was there a form of membership card presented to that meeting?

A. A draft of one was; yes, I think a sketch of one was presented there.

Q. And was that approved?

A. Yes, sir.

Q. Who presided at that meeting on June 15th?

A. Mr. Underwood.

Q. Who acted as Secretary?

A. I think it was Mr. Bertolett.

Q. Do you recall whether representatives at that meeting appeared from other points than Norfolk and Richmond?

A. Yes, sir.

Q. What other places were represented?

A. Roanoke Rapids, Williamsburg, Petersburg, and I am not sure about Suffolk.

Q. Was Fredericksburg represented?

A. Yes, sir

4162 Q. I hand you intervener's exhibit No. 8, which appears to be minutes of a meeting on June 22nd, and I will ask you if those are the minutes of the meeting that you attended at the Blair Junior High School?

A. Yes, sir; except I think we had a little more business during that time than that.

Q. So far as they go, Mr. Brown, the minutes do correctly record what took place at that meeting?

A. Yes, sir.

Q. What other matters were taken up which are not
4163 included in the minutes, according to your recollection?

A. Merely a general discussion by the representatives who were present at the meeting.

4164 Q. Before I forget it, when Mr. Elliott made his statement to the steering committee at the June 16th meeting that the transportation, bus, and railway employees wanted to come in with your organization, was there any statement made by him that he was taking this step because Mr. Bishop had requested him to or wanted him to do so?

A. No, sir.

Q. Did he mention Mr. Bishop that night?

A. Not that I remember.

Q. Did he mention anything that had caused him to change his mind between the meeting of June 11th and the meeting of June 16th?

A. Nothing other than that his men were ready to come into our organization.

4165 Q. Can you give us approximately the number, as nearly as you can recollect, when you received those membership cards? I mean can you give us approximately the date when you received the membership cards.

A. It seems to me that it was around the 18th of June or the 20th of June.

Q. And you started signing up men immediately thereafter, did you?

A. Yes.

4166 Q. How many men did you sign up, as you recall it, Mr. Brown?

A. Possibly 90 percent of them in the construction department.

Q. What time had you finished signing up those 90 percent of the men?

A. I signed them up that very day I turned over the steering committee to Bill Faust.

Q. And I understand that was July 12th or 13th. Is that right?

A. That was the 13th of July.

Q. When you signed up these men, Mr. Brown, when and where did you sign them up?

4167 Q. As a rule I met them on the sidewalk outside of the plant, and I handed them a card and asked them did they sign up or had they signed up, and if they said no, that they did not want to sign up, I stuck it back into my pocket, but if they did want to sign up, then I took it then. If I was

walking over the plant and one of them offered me his card. I gladly took it.

4168 Q. Was it possible for you to sign up these cards during working hours?

A. No, sir. I worked with two helpers, myself and two helpers, and I was usually away from Cove Street from 8 o'clock in the morning until after 5 in the afternoon.

Q. Therefore, you are positive, I believe you said, that you did not sign up any men during working hours?

A. Yes, sir; I am quite positive.

Q. But you did sign them up in the wash room or when they came up and asked you to give them cards?

A. Yes, sir.

Q. Was there any other solicitation going on at that time for a labor organization?

4169 A. Yes, sir.

Q. Who was doing the soliciting?

A. Well, it seemed to me that Mr. Latham, Mr. Staunton, and Mr. Davis were all soliciting.

Q. Were they soliciting on the company property there at Cove Street?

A. Mr. Latham was down on the corner from the garage. I do not know definitely that Mr. Staunton did any soliciting. I merely said that by seeing him talking to the men. I know Mr. Davis was soliciting on the company's property.

Q. You say Mr. Davis was soliciting on the company's property?

A. Mr. Davis solicited me on company property.

Q. For what organization?

A. I. B. E. W.

Q. Did Mr. Latham ever solicit you for the I. B. E. W. at that time?

A. Yes, sir.

4171 Q. Mr. Brown, who conducted the elections for representative?

A. I did in collaboration with three other men—three or four other men.

Q. The constitution provided that the members of the steering committee were to see to the conduct of the first election; is that right?

A. That is right.

Q. And you were a member of the steering committee from Cove Street?

4172 A. I was.

Q. In that election you had absolutely no hope yourself of getting any office; is that right?

A. That is true.

Q. Where was the voting held?

A. In front of the Cove Street office. A lot of boxes were placed on the sidewalk at the curb line.

Q. There has been introduced in evidence, as Intervener's Exhibits 12, 13, 14, and 14-A, nomination ballots and election ballots in the form of an envelope which was used in that election. I ask you to identify these, if you can, as exact copies or parts of the same printing of the ballots and envelopes as were used in the elections held on July 2nd and on July 12th, 1937?

A. They are the same except there is an envelope missing.

4173 Q. That was a plain envelope in which the ballot was enclosed?

A. Yes, sir.

Q. Mr. Brown, was it possible in the manner in which this election was held for anyone to know how any person voted?

A. No, sir; unless he looked over his shoulder when he wrote it down.

Q. How were the ballots counted? I mean, after they were put in the ballot boxes what procedure was followed in counting them?

A. The ballot boxes were taken up to the organization's office. They were opened—the ballot box was slit open.

Q. In the presence of whom?

A. All inspectors of election. The name of each member was checked off the list as to whether he had paid his membership fee, and if he had it was placed on one side, and if he had not, why, it was just placed on the other side.

4176 Q. In working for the Brooklyn Edison Company, did
4177 they have an Employees' Representation Plan?

A. Yes, sir.

Q. Had you had any experience with that plan at all?

A. No, sir; I was merely a member.

4178 Q. Mr. Brown, you attended every meeting that was held in Norfolk of the committees which led up to the organization of the I. O. E. up to and including July 13, 1937; did you not?

A. Yes, sir.

4179 Q. At any of those meetings did anyone——

A. May I state there——

Q. Yes.

A. I attended the meeting in connection with the distribution end of it.

Q. At any of the meetings that you attended prior to July 13th, and including July 13th, 1937, was any representative of

the management of the Virginia Electric & Power Company present, with the exception of the meeting on May 24th?

A. No, sir.

Q. Was anyone in a supervisory capacity present?

A. Not that I know of.

Q. During that period, did you see or did you hear of anyone in a supervisory capacity with the Virginia Electric & Power Company in any way interfering or discussing the organization of the employees?

A. No, sir.

Q. Did you discuss it with anyone during that period—anyone in a supervisory capacity with the Virginia Electric & Power Company?

A. No, sir.

Q. Have you discussed it since?

A. I have not.

Q. Have you ever heard of any interference by the company with the affairs of the I. O. E.?

4180 A. I never heard of any.

Mr. WHITE. Just a minute, Mr. Examiner. You have requested that we file in evidence a list of the names of the representatives and grievancemen in Richmond and Norfolk districts of the I. O. E., and I ask that the list of representatives and grievancemen in the Norfolk district be received in evidence as Intervener's Exhibit No. 23, and the list of representatives and grievancemen in the Richmond district be received in evidence as Intervener's Exhibit No. 24.

Trial Examiner FORT. They will be received, if there is no objection.

(The documents referred to were marked "Intervener's Exhibits 23 and 24" and were received in evidence.)

4198 Cross-examination by Mr. MOORE:

Q. Mr. Brown, why did you decline to join the American Federation of Labor in accordance with Mr. Latham's solicitation, but chose instead to try with others to form the Independent organization?

4199 A. I had numerous reasons.

Q. Just briefly what were those reasons?

A. Well, personally I didn't see the necessity of an organization other than one among the men themselves. The I. B. E. W had been really drastic in trying to organize the Brooklyn Edison Company employees and there have been several fights among the members of the Brooklyn Edison Organization and among the members of outside organizations in New York at

which I was present. There were those and my general attitude toward violence that caused me personally not to go in.

Q. Were the activities in the I. B. E. W. in connection with a Consolidated Edison Company while you were in the employ of the Consolidated Edison Company such as to make a favorable impression upon you as to that organization?

A. I wouldn't state definitely that it was the I. B. E. W., Mr. Moore. All of the outside organizations were having trouble there at the time when I was there.

Q. Was it your belief and conviction that the best interest of the men could be served through independent organization rather than through an outside organization?

A. Yes, sir.

Q. Did anything other than that purpose motivate you in what you did in this matter?

A. No, sir.

4215 Cross-examination by Mr. HILTON:

Q. Well, was it your understanding that the company did not want to deal with small groups of men?

A. I gathered they preferred not.

Q. And after the speech was over the representatives were told they could stay and use the hall for any particular purpose?

A. So they could do what they saw fit.

Q. What did you understand by doing as they saw fit?

A. They could either decide whether they wanted to organize, or how they wanted to organize, or break the windows, if they wanted to, or tear up the stage if they wanted to.

Q. To tear up the place if they wanted to.

A. That is the impression I got.

4225 Q. Now, do you know if any of the representatives in the other departments received authorizations similar to the one you have just identified, Intervener's Exhibit 3-C?

A. I think so.

Q. Did you ever see them?

A. I saw Mr. Allison's.

Q. That is not the same Mr. Allison that had this authorization prepared for you, though, is it?

A. No, sir; that is his brother.

4226 Q. Did you believe under that authorization you had the right to perform any act in connection with forming a labor organization that was an independent organization?

A. Yes, sir; that coupled with the vote, I did.

Q. Then, you attended this meeting on June 1st with the other representatives who had attended the meeting on May 24th did you not?

A. Yes, sir.

Q. Now, between May 26th and June 1st, did you contact any of the representatives in Richmond?

A. No, sir.

4227 Q. All right. What did they agree to do in connection with the authorizations that you had received from your various groups?

A. I think that most of them were sent with the same authority that I was, to try to form an independent organization.

4228 Q. Well, did you decide upon any course of action to take at that meeting in connection with forming a labor organization?

A. Yes, sir.

Q. What steps did you take?

A. We decided to await the copy of Mr. Elliott's proposed plan and take it back to the men.

Q. How long were you to wait?

A. I think he agreed to have it within one or two days.

4231 Q. Well, did you decide as to the particular plan you would follow in preparing your constitution and bylaws?

A. We—we left that up to the judgment of the various committees and the attorney.

Q. Did you appoint a committee to draw up a constitution and bylaws?

A. We appointed a committee to see the attorney and have it done.

Q. And have it done.

A. In regard to our ideas.

Q. I believe you stated that no specific instructions were given as to the plan, except that it would be an independent organization.

A. To the best of my memory, there was no instructions given.

Q. And now, was this meeting on June 3rd a meeting of the Steering Committee?

A. Yes, sir.

Q. When was the name of the Steering Committee adopted by you representatives?

A. I think it was at that meeting.

4237 Q. You and the rest of the representatives from the Norfolk division went to Richmond on the 15th, did you not?

A. Yes, sir.

Q. And that was still a meeting of the steering committee, was it not—on June 15th?

A. As far as I know; yes, sir.

Q. Well, as a matter of fact, it was a meeting of the Norfolk committee and the Richmond committee, was it not?

A. That is right.

Q. And at that meeting you adopted the constitution and bylaws?

A. I would rather say that we completed the formation of the constitution and bylaws.

4238 Q. So you did adopt your constitution and bylaws that night, didn't you?

A. Yes, sir.

Q. How long did that meeting last?

A. Five or six hours.

Q. Now Mr. Brown, I will show you what is in evidence as Board's Exhibit No. 36 and I direct your attention to page 7 of the bylaws of the organization, and I will ask you if you are familiar with Article II with respect to the payment of dues?

4239 A. Yes, sir.

Q. Having read that article, Mr. Brown, it provides in effect that the members shall authorize the company to deduct their dues from their pay and turn it over to the organization, doesn't it?

A. Yes. In the event the company agrees to that system. That was the agreement we made that night.

Q. That is not in Article II of the bylaws though, is it?

A. No, sir. We had no knowledge that the company would agree to it.

4249 Cross-examination (resumed) by Mr. HILTON:

Q. * * * we were speaking of the meeting of June 22nd at the Blair Junior High School. Did you yourself call that meeting?

A. No, sir.

Q. Who called that meeting?

A. I believe a committee was appointed to get that location, and I think Mr. Tatem called that meeting.

Q. Were you on the committee to get the location?

A. No, sir.

Q. How were the men notified of that meeting of June 22nd, Mr. Brown?

A. Notification was put in the public papers, I believe.

Q. Did you have to pay for the notice you put in the papers?

A. I don't know.

Q. Your meetings from May 26th in the Cove Street Garage up to June 22nd, 1937, had all been held on company property, had they not?

A. No, sir.

4250 Q. They had not?

A. No, sir.

Q. With the exception of the discussion that you had with certain men outside of the plant all of the meetings of the committees had been held on company property, had they not?

A. No, sir.

Q. You voted on May 26th on company property, did you not?

A. Yes, sir.

Q. And you had your meeting of June 1st on company property, did you not?

A. I think so.

Q. You know so, don't you?

A. If you show me the minutes I will state positively.

Q. That is the night you had the discussion about the big circle—Mr. Elliott's plan?

A. Yes.

Q. And that was in the Virginia Electric and Power Company auditorium, wasn't it?

A. Yes.

Q. And your meeting on June 3rd was in Petersburg?

A. Yes.

Q. And that was on company property, wasn't it?

A. Yes.

Q. And your meeting on June 7th, when Mr. Tatem was elected Chairman, was also on Virginia Electric and Power Company property, wasn't it?

4251 A. That is right.

Q. And your meeting on June 11th, when you discussed the constitution and bylaws, was in the Virginia Electric and Power Company auditorium, was it not?

A. I don't remember whether it was in the Virginia Electric and Power Company auditorium or in the Y. M. C. A. One of those meetings was in the Y. M. C. A.

Q. In the Virginia Electric and Power Company Y. M. C. A.?

A. No, sir; the Navy Y. M. C. A.

Q. That was the meeting on June 17th or, rather, on June 16th that you met at the Navy Y. M. C. A.?

A. That was before Jun 22nd.

Q. Yes.

A. You stated all of the meetings were on company property.

Q. I am asking about specific meetings and about the one on June 11th. That is the meeting where Mr. Elliott again discussed his plan. Was that on Virginia Electric and Power Company property?

A. I think so.

Q. And then the meeting on June 15th in Richmond, where you adopted the constitution and bylaws, that is, the steering

committees from both the Norfolk Division and Richmond Division, that was on Virginia Electric and Power Company property, was it not?

A. No.

4252 Q. It was not?

A. No.

Q. Where was it?

A. That was in the American Legion Hall.

Q. That was in the American Legion Hall?

A. Yes.

Q. On May 26th, after the men had voted at the Cove Street Garage, you told them that no more meetings could be held on company property, didn't you?

A. I told them.

Q. Why did you and the rest of the committees meet on company property?

A. I wasn't in charge of the rest of the steering committees. I was only in charge, I think, of the men I was representing.

Q. Did you believe that it was improper for the committee to meet on company property after May 26th?

A. Yes, sir.

4259 Q. So far as you were concerned, and you being a member of the Steering Committee, that committee was dissolved on July 13th at the meeting that you held on the lot next to the Cove Street plant? Is that right?

A. So far as I was concerned, it was.

4261 Q. At that meeting you were also—not necessarily you yourself, Mr. Brown, but the men were asked what they wanted with respect to working conditions? Is that right?

A. Yes, sir.

Q. And some of the men said that they wanted a fifty percent increase in pay?

A. I believe that was later that that came up. I think they asked for $1.10 an hour at that time and various scales from there down.

Q. Did any of them say that they wanted a closed shop?

A. I think so.

Q. Was the check-off discussed at that meeting that was held on July 13th?

A. I believe the authorizing of the company to deduct the fee from the salary was discussed.

Q. Do you remember who discussed that?

A. I believe there was a general discussion.

4275 Q. Now, in your constitution and bylaws you do not provide for any strike, do you?

A. There is nothing that takes the power of strike away from us, that I know of.

Q. Well, you do not have any procedure for calling a strike under the constitution and bylaws, do you?

A. Not that I know of.

Q. Would you say that in July of 1937 you would have been willing to go on strike to enforce any of the demands that the I. O. E. was asking?

A. I did not think a strike was necessary. I knew we had the Labor Board to appeal to.

Q. Now, would you answer the question?

Trial Examiner FORT. Read the question, Mr. Reporter.

4276 (The last question was read.)

The Witness. If the Labor Board had so ordered, I would.

By Mr. HILTON:

Q. You mean if the Labor Board had ordered you to go out on strike?

A. If they sanctioned a strike, I would.

Q. You mean you would have to get permission of the Labor Board?

A. I think I would get a decision to go on strike.

Q. What decision would you get?

A. I do not know what decision I would get.

Q. You were familiar with the National Labor Relations Act——

A. I stated that I was not familiar with it. I read some of it.

Q. Do you recall reading any of the Act in regard to employees' right to strike?

A. Yes, sir.

Q. Don't you know that under the Act the employees are given the right to strike?

A. I do.

Q. So you knew that you did not need any permission from the Labor Board or any decision of the Labor Board before you could call a strike?

A. I said I would await the decision before I would call a strike.

4285 By Trial Examiner FORT:

Q. Now, before the constitution and bylaws were ever presented to the men as a whole, were they printed for general distribution?

A. They were printed, sir.

Q. And they were sent out to all the men, to each em-
4286 ployee of the company?

A. To all the representatives.

Q. To only the representatives?

A. Yes, sir.

Q. I believe at that time you were a representative?

A. Yes, sir.

Q. Now, at what meeting were they submitted to the men—not to the representatives, but to the whole rank and file of employees?

A. Every opportunity I got I showed it to them. I never held a regular meeting.

Q. I mean formally, where they had an opportunity to discuss it generally.

A. There was no particular meeting for that, sir.

Q. Well, I understood you had a meeting on June 22nd at the Blair Junior High School, and it was read to them there.

A. Yes, sir.

4287 Q. I am talking about the men, not the representatives.

A. At the Blair Junior High School, I think was the first opportunity, when the mass meeting was held, where the men could all discuss it.

4289 Q. You did not think the meeting was held, then, for the purpose of submitting them to them to get their approval or disapproval?

A. I thought it was; yes, sir.

Q. Yet you do not know what they did about it?

A. They had the power to withdraw it if they didn't care for it.

Q. I said, you did not know whether they accepted it or rejected it at that meeting.

A. I think they accepted it.

4303 Redirect examination by Mr. WHITE:

Q. You have been asked with respect to whether or not when you voted as a member of the committee to ratify the constitution and bylaws whether you had that power. What would have happened if the individual employees at the Cove Street Garage had not wanted to follow your leadership? Would you have had anything to bind them?

A. No.

Q. Would they ever have been members of the I. O. E. if they had not signed this application card, or this application for membership?

A. No.

Q. Is there any man a member of the I. O. E. who has
4304 not signed that application?

A. Not to my knowledge.

Q. Then every man who came into the I. O. E. had to testify in writing that he accepted the constitution and bylaws?

A. Yes.

Q. And your action in any committee meeting approving a constitution and bylaws could not bind anybody until they had signed this application for membership? Is that correct?

A. That is correct.

4305 Q. Subsequent to June 15, 1937, has any meeting, so far as you know, been held on the company property by members of the I. O. E.?

A. Not to my knowledge.

4306 Q. Have any meetings been held during working hours?

A. No, sir.

Q. Of the men who attended, I mean?

A. No, sir; not to my knowledge.

Q. Prior to June 15, 1937, what did you have in the line of an organization of employees?

A. Just a semblance of an organization, I will state.

Q. As a matter of fact, up until that time wasn't it true that you had no organization——

Trial Examiner FORT. Up until what time was that, Mr. White?

Mr. WHITE. June 15, 1937.

By Mr. WHITE:

Q. As a matter of fact, Mr. Brown, up until that time isn't it true that you had no organization at all but were a group of delegates floundering around trying to find out what your rights were and what you could do?

A. That was the general lay-out.

Q. Up until June 15, 1937, did you have anything in the line of an organization that could have gone to the Virginia Electric and Power Company for the purpose of negotiating a collective bargaining agreement?

A. No, sir.

Q. Up until that time did you know whether you were going to have a system-wide organization or outside affiliation or
4307 inside affiliation, or what you were going to do?

A. We didn't know until that time.

4312 Q. * * * at page 4138 of the record, you testified, in reference to the authorization paper which was signed at the same meeting of May 26, 1937, in response to a question: "Was any vote taken before those blanks were filled in? A. None

other than chairman." Please state whether the vote of the employees present at that meeting selecting their preference for collective bargaining, C. I. O., A. F. of L., and so forth, was taken before that paper was brought to the meeting.

A. Yes, sir.

Q. What was the chronology of events at that meeting so
4313 far as the vote for selection of outside or inside affiliation, selection of chairman, and the presentation of that paper was concerned.

A. First the vote for chairman was taken; then the vote for the kind of organization, or organization, was taken; and after the votes were counted then I requested that paper to be filled in.

4337 WALLACE O. MORRIS, a witness called for and on behalf of the Intervener being first duly sworn, was examined and testified as follows:

Direct examination by Mr. WHITE:

Q. What is your name?

A. Wallace O. Morris.

Q. Where do you live?

A. 539 North Elm Avenue, Portsmouth.

Q. By whom are you employed?

A. By the Virginia Electric and Power Company.

4338 Q. In what capacity?

A. Line trouble shooter.

Q. In Portsmouth or in Norfolk?

A. Portsmouth.

Q. Do you work out of the Cove Street Plant of the company here?

A. Indirectly. I have headquarters on Middle Street in Portsmouth; but my boss' boss is in the Cove Street plant.

Q. Who is your immediate boss?

A. B. E. Harris.

Q. Mr. Morris, were you employed by the Virginia [illegible]tric and Power Company in May 1937?

A. Yes, sir.

Q. Did you attend the meeting at the Cove Street Garage on May 24, 1937, in the afternoon?

A. I attended a meeting at the Cove Street Garage. As to whether it was on May 24th, I don't remember the date.

4339 Q. Do you recall whether Mr. Holik said or suggested in any way that you should form an independent organization or inside organization?

A. No, sir. He didn't tell us to do that.

Q. Did he make any suggestions to you as to what you should do with respect to labor organizations?

A. From Mr. Holik's remarks I went to the Boush Street office that night, not knowing what I was going for.

Q. You did go to the meeting that night that Mr. Throckmorton addressed?

A. Yes, sir.

4340 Mr. WHITE. May we stipulate, then, that this witness would testify substantially the same, or to substantially the same state of facts as testified to by Mr. Faust, Mr. Brown, and the other people who attended that meeting? May we stipulate to that?

Mr. HILTON. Yes.

Mr. WHITE. Then, Mr. Examiner, that will be agreeable.

4342 By Mr. WHITE:

Q. Did you attend a meeting on May 26th, a couple of days after this meeting with Mr. Throckmorton, which was held at the Cove Street garage?

A. I attended a meeting at the Cove Street garage.

Q. Did you attend a meeting at which a vote was taken on what the men wanted to do with respect to a labor organization?

A. Yes.

Q. Do you recall whether or not a secret ballot was taken at that meeting?

A. There was.

Q. Did you participate in the voting?

A. Yes, sir.

Q. I hand you intervener's exhibit No. 3 and ask you to read over those minutes and then state whether they record correctly what transpired at the meeting.

A. That appears to be about the purpose of that meeting.

4343 Q. Did you go to that meeting and cast a ballot for any persons who were not in attendance there?

A. Yes, sir.

Q. Who were those people for whom you voted?

A. They were the men who work in the installation, meter, and trouble shooter departments in Portsmouth. It was on the authority of those men.

Q. Were you instructed to vote the way Cove Street went there?

A. Yes.

Q. Did you await the outcome of the ballot before you voted for those men?

A. I don't remember.

Q. Was it necessary that that vote be counted in order to determine what the majority wanted down there that day?

A. No, sir. That 15 votes wouldn't have changed the count at all.

Q. I will ask you to look at the last sheet of intervener's exhibit 3 and I will ask you if that is your name that is signed at the top.

A. Yes, sir.

Q. Did you personally obtain the signatures of all the people on that sheet?

A. Yes, sir. I carried it to them and they signed it.

4344 Q. Are those the persons for whom you cast the vote at that meeting?

A. Yes, sir.

Q. Did you attend the meeting on June first at the company offices at which Mr. Elliott explained his constitution?

A. Yes, sir. I was there.

4345 Q. Will you state what that constitution was, what the principal provisions of that constitution were, as you now recollect?

A. You want an idea of what that was?

Q. Yes; your idea of what it was as it was explained to you that night.

A. It was to put one man in charge, that he would have all of the power in it completely.

Q. Were you in favor of that that night?

A. No, sir.

Q. Do you remember what action was taken on it?

A. It was decided to wait over a few days and let it be taken back to the men and let it be discussed, as best I can remember that.

Q. Do you recall any discussion you had that night with Mr. Reutt about that proposed constitution?

A. I was doing a lot of arguing backwards and forwards with different ones.

Q. You don't recall Mr. Reutt specifically?

A. No, sir. I was strictly opposed to it myself.

Q. And you made your position well known that night, did you not?

A. Yes, sir.

Q. Did you attend the meeting held in Petersburg on June 3rd, about two nights after this meeting you have just been

4346 talking about?

A. I attended a meeting in Petersburg.

Q. Who notified you to attend that meeting? Do you recall that?

A. Mr. Haskins, a trouble shooter in Norfolk, told me about it.

Q. Mr. Morris, with whom did you go up to that meeting at that time?

A. With Mr. Tatem and Mr. Brown.

Q. Was Mr. Elliott at that meeting?

A. Yes, sir.

Q. Do you recall who was there from Richmond?

A. Mr. Underwood, that is, Eugene Underwood, and a fellow named Clark, and Bertolett. Those are three of them that I remember.

Q. Had you known any of those men before that meeting there?

A. Clark.

Q. You had known Clark?

4347 A. Yes, sir.

Q. He had worked here in Norfolk?

A. Yes.

Q. Mr. Morris, what was the action taken at that meeting as you now recollect it?

A. After discussing it and talking over the way we had been through it, we decided at that meeting to hire a lawyer to draw up a constitution and bylaws for the organization that we were trying to form.

Q. Did you make a motion to that effect?

A. Yes, sir.

4349 Mr. WHITE. It is stipulated this witness will testify as to the proceedings of the meeting in Petersburg on June 3rd, 1936, in substantially the same manner as P. D. Brown has already testified.

Mr. HILTON. That is right.

Trial Examiner FORT. That will be noted in the record.

Mr. HILTON. That is all right.

Mr. WHITE. It is stipulated that this witness will testify as to substantially the same facts with respect to the meetings of the Norfolk steering committee on June 11th and June 7th as P. D. Brown has already testified.

Mr. HILTON. That is agreeable.

4350 By Mr. WHITE:

Q. Now, Mr. Morris, you did attend the meeting on June 16th at the Navy Y. M. C. A., at which Mr. Elliott appeared and made a statement with reference to the transportation department, did you?

A. Yes, sir.

Q. Do you recall that statement?

A. He roughly said—he came in and said the transportation department wanted to come in with the other departments of the company in this organization.

Q. Did he say at that meeting—did he give any reason as to why he was coming into this organization?

A. I just merely thought that he, after talking it over with the transportation men, that they decided they wanted to come in.

Q. Did he make any statement to the effect that Mr. Bishop wanted him to do that, and that is the reason he was changing his mind?

A. I do not remember ever hearing Elliott mentioning Mr. Bishop's name.

Q. Did he mention any other man connected with the company in a supervisory capacity?

A. There at that meeting?

Q. At that meeting, if you recall?

A. No.

4351 Q. How were those elections held in Portsmouth?

A. I took the boxes—a regular cigar box, sealed it, cut a hole to drop the ballots in; and those men, after they were off duty, about a half block from the plant, put it in this box. After the ballots were cast I brought them to Norfolk to the Monticello Arcade Building to be counted.

Q. Was it possible for anyone to know how anybody voted?

A. No, sir.

Q. Now, were you present when the ballots were opened?

A. I was there.

Q. What was the procedure up there when they were opened?

A. The ballot was in two envelopes, two sealed envelopes. The first one had the man's name on it——

The WITNESS. Then these three men counted the votes up there. That is the way they were counted.

By Mr. WHITE:

Q. And the way they were counted, could anybody know how any particular person voted?

A. No, sir.

4360 Cross-examination by Mr. MOORE:

Q. Well, have you been a member of any other labor organization?

A. Yes, sir.

Q. That has members among the employees of the company?

A. Yes, sir.

Q. What?

A. The I. B. E. W.

Q. What date did you join that?

A. I don't remember the exact date. It was some time around the first of August or probably the last part of July.

Q. Who solicited you?

A. I went to one of the meetings and decided to join.

Q. Who was it that did solicit you before the meeting though?

A. Who took my application?

Q. Who suggested or invited you to go to that meeting?

A. I saw the handbills that were distributed by Mr. Latham, and I went to that meeting.

Q. Did that handbill sort of worry you and stir you up?

A. No, sir.

Q. I now hand you Intervener's Exhibit No. 21, entitled
4361 "Warning utility workers." Is that one of the handbills that you saw that caused you to go to the I. B. E. W. meeting [handing the exhibit to the witness]?

A. I have seen that handbill.

Q. Was that one of the handbills, or was it one that looked like that, that you saw?

A. That is it. It was not really, though, that handbill that caused me to go. I have always been interested in the I. B. E. W.

Q. I understand, but the thing you said a moment ago, that prompted you to go to that meeting was seeing a handbill; is not that correct?

A That is one of the reasons that I went that night.

Q. Where was the handbill given to you?

A. I couldn't answer that. I don't remember.

Q. Don't you recollect anything about where it was given to you?

A. I have had several of them several times, at different times, and I remember one time I got one over at the Cove Street garage, over there.

4367 Q. Have you held any position in the I. B. E. W. local?

A. Yes, sir.

Q. What position?

A. Vice president.

Q. How long did you hold that position?

A. I suppose about a month—probably not over two months, I don't think.

Q. Now, have you found that your connection with the I. B. E. W. has in any way been hurtful to you in your connection with the company?

A. Not in any way that I know of. I am still on the same job and the same hours I was then.

4369 Mr. WHITE. Mr. Examiner, I desire to introduce in evidence at this time a list of names of all the persons who voted in the election of July 2, 1937, to select nominees for the office of representative in the I. O. E., and the names of all

persons who participated in the election held on July 12, 1937, at which the representatives were elected. These are separated by voting sections, and the names are taken from the envelopes which the men themselves signed, and which have been
4370 preserved in the offices of the organization. As I understand it, it is satisfactory to counsel for the Board that these be received in evidence and two copies made from the records of the organization.

Trial Examiner FORT. I understood that that would be the agreement. I would like to ask, though, does that go to all sections of the system?

Mr. WHITE. Yes, sir; that includes every section of the system where the men participated in the voting.

Trial Examiner FORT. And the election was held on those two dates?

Mr. WHITE. Yes, sir; that was system-wide. As far as the I. O. E. is concerned, all of the representatives were involved on the same date, July 2, 1937, and all of the nominees were submitted and voted on on July 12, 1937.

Trial Examiner FORT. Will you have a witness on the stand who can testify as to how the arrangements were made, so that the record will show what happened on those two dates?

Mr. WHITE. I think Mr. Faust testified as to what happened at Cove Street up in the garage as to the entire system, as far as holding elections was concerned.

Trial Examiner FORT. I did not know how they happened to mention those two dates.

Mr. WHITE. The constitution provided that.

4371 Trial Examiner FORT: Oh, the constitution provided that?

Mr. WHITE: Yes.

Trial Examiner FORT: That is the only question I had about it.

Mr. WHITE: Yes.

Trial Examiner FORT: They will be admitted.

Mr. HILTON: And it was held by the steering committee.

Mr. WHITE: Yes; in accordance with the constitution.

Trial Examiner FORT: They will be accepted as intervener's exhibit.

4376 By Mr. HILTON:

Q. After the speech of May 24th did you report what had occurred at that meeting to the men in Portsmouth?

A. Yes, sir.

Q. Did you tell them that you believed that the company wanted to deal with an organization such as we have been
4377 speaking of here now?

A. I told those men what I thought they wanted was to deal with an organization that would make a contract which, if it was reached, was binding.

Q. And the contract would cover the Norfolk division and the Richmond Division?

A. The entire division and the entire system.

Q. The entire system?

A. Yes.

Q. Did the men agree to that?

A. Yes, sir.

Q. When you told the men they wanted an organization covering the entire system did you mean the entire system with respect to the Electric Division of the company?

A. How was that?

Q. When you told the men they wanted an organization covering the entire system did you mean the entire system with respect to the Electric Division of the company?

A. The entire company. That is the way he brought that out. Those men seemed to think that if they could get an entire organization and everybody together that they would be better off. That was the opinion of the men.

Q. By an entire system you mean the employees in the Electric Department, the Gas Department, the Transportation Department, and the Sales and Accounting Department? Is that right?

4378 A. Is that right—with separate workings, of course, for each one.

Q. With separate workings for each one?

A. Yes; that is right. That was my opinion, and what I told them they considered, or it was their opinion of what they wanted.

By Trial Examiner FORT:

Q. It was your opinion of what their opinion was?

A. It was my opinion and their opinion after we talked it over.

By Mr. MOORE:

Q. You mean the men you worked with?

A. Yes.

Q. The men you worked with, you say?

A. Yes. I do not mean the companies but I mean the men I worked with.

By Mr. HILTON:

Q. On May 26th you had another meeting at the Cove Street Garage, didn't you?

A. Yes.

Q. How were you notified of that meeting?

A. It was by telephone; but I don't know who notified me.

Q. Did you receive that telephone call at your home?

A. At my residence; yes, sir.

Q. And then I believe you went to the meeting on the 26th and you cast 15 votes for the men in the Portsmouth Division?

A. Yes, sir.

4379 Q. Had you talked to the men before you went to that meeting?

A. Yes, sir.

Q. Did you tell them that an election was to be held or a vote of some kind was to be taken at Cove Street on the 26th?

A. Yes, sir.

Q. Did you tell them that a vote was to be taken as to what kind of an organization was to be formed?

A. Yes, sir.

4380 Q. Did you talk to the men, let us say, on the 26th in regard to the meeting where the vote was taken as to what kind of an organization the men would have?

A. We were discussing three organizations.

Q. You mean you and the men you were representing?

A. Yes, sir.

Q. What was the opinion of the men as to what kind of an organization they would have?

A. The opinion was that they wanted an independent organization.

4408 D. M. TATEM, a witness called by and on behalf of the intervener, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. WHITE:

Q. Will you please state your name?

A. D. M. Tatem.

Q. Where do you live?

A. I live in Portsmouth.

4409 Q. By whom are you employed?

A. By the Virginia Electric & Power Company.

Q. In what capacity?

A. Switchboard operator.

Q. At the Reeves Avenue power station?

A. At the Reeves Avenue power station, Norfolk.

Q. Mr. Tatem, how long have you been employed by the company?

A. Since December 13, 1926.

Q. You have spent all of your time at the Reeves Avenue power station since you have been employed by the company?

A. Yes, sir.

4411 Q. Mr. Tatem, did you hear Mr. Faust testify as to what took place at the meeting on May 24th?

A. I did.

Q. Is your recollection substantially the same as to what

4412 took place at that meeting?

A. Yes; I believe it is. I think he told it fairly accurately.

Q. Now, after the company officials left, did you remain until the meeting was entirely over?

A. No; I did not. I left before the meeting was over.

Q. At the time you left, had any action, any definite action, been taken?

A. No; there had been no definite action there. There was quite a bit of confusion. I left more in disgust than anything else.

Q. It has been testified that you made a suggestion that those present report back to their respective groups and come back to a meeting to be held at a later date. Do you recall making that suggestion to the group?

A. Yes; I made it twice. I made it first as a suggestion without any effect. Then I made it as a motion, with the same amount of effect.

Q. In other words, what happened was it was more like a disorganized mob than anything else up there; is not that correct?

A. Very much so.

4414 Q. Did you attend a meeting in the company auditorium here in Norfolk on June 1, 1937?

A. Yes; I attended that meeting, too.

Q. How did you happen to get to that meeting?

A. Several of the fellows came to me. I had been elected a representative at that time.

Q. How had you been elected as a representative?

A. At a meeting held at Reeves Avenue.

Q. Who called that meeting?

A. Mr. N. R. Jones.

Q. And at that meeting what had taken place?

A. Well, I was not present at the meeting. After the meeting was over, some of the fellows came back and told me that I had been elected to represent the operators in the department to help

set up an independent organization. They said they had voted upon the A. F. of L., the C. I. O., and an independent organization, and that those present had voted unanimously for an independent organization, and had elected a committee to set up, or make an attempt to set up, that sort of an organization for the employees.

4415 Q. Who is Mr. N. R. Jones?

A. He has the same position with the company that I do.

Q. Now, you attended this meeting on June 1st at the auditorium?

A. Yes, sir.

Q. After having been elected as a representative by your group?

A. Yes; I attended that meeting.

Q. Do you recall Mr. Elliott's constitution and bylaws that were presented to that meeting?

A. Well, it took him some time to read the constitution
4416 and bylaws—I imagine 20 or 30 minutes. I remember being impressed with certain parts of it.

Q. What parts impressed you?

A. I was impressed with the fact that the organization provided for one top man, who was to receive a salary, to be decided upon later, and who was to be gotten out of office by due process of law. * * * It was read hurriedly, and there was much confusion, and I wasn't particularly impressed with it. I was merely impressed with the fact that I would like to look at it and see what it was.

Q. Did you make any motion to that effect?

A. Yes, sir. I made a motion that the proposed constitution and bylaws—copies of it be furnished each member, with ample time to go back and present it to the rest of the employees, and come back at a later date.

Q. Was that motion carried?

A. Yes; it was carried.

4422 Q. What time of day did you get to Petersburg?

A. I think we got there a little before eight o'clock. We were the first ones there. We had been there not very long and we were standing out in front of the office building when Mr. Underwood and the two other men came up.

Q. Did you know the other two men?

A. I didn't know them at that time. I don't recall ever having seen them.

Q. Mr. Underwood was the only one you knew previously?

A. Yes.

Q. You now know the other two men?

A. Yes; Mr. Clark and Mr. Bertolett.

Q. Who else was there from Norfolk besides you and Mr. Morris and Mr. Brown?

A. Mr. Gregory and Mr. Walsh.

Q. From what departments did they come?

A. They are from the gas company. Did you mean Mr. Morris?

Q. Yes.

A. Later Mr. Elliott came in, and Mr. Diggs, Mr. Hough, and Mr. Nicholson.

4423 Q. I hand you minutes of the meeting of June 3rd, which
4424 were introduced in evidence as Board's Exhibit No. 19, Mr. Tatem, and I will ask you if they correctly describe what took place at that meeting, or do they correctly record what took place at that meeting?

A. Yes, sir. I have read those minutes before.

Q. Are they correct, so far as you know?

A. Yes, sir.

Q. Mr. Tatem, before you came to that meeting on June 3rd had you gotten any specific authority to attend on behalf of the men from Reeves Avenue?

A. Yes, sir. I believe in the telephone conversation with Mr. Underwood that some mention was made of that, so I called the plant and asked somebody on the committee that had already been set up go around and get a signed petition. The only reason I did that, as I recall it, was because when I went to Petersburg I was representing not only the operating department but the maintenance forces as well, and I thought if the question came up as to authority in that meeting I had better have a signed statement from both working groups.

Q. So you attended that meeting with that written authority in your pocket? Is that right?

A. That is right.

Q. Did the others who went with you have similar authority?

A. Yes, sir; I believe they did.

4425 Q. Mr. Tatem, I hand you a paper which is dated June 3, 1937, or I will hand you two pieces of papers, to which certain names are signed, and I will ask you to state what that paper is?

A. This is the signed statement that I was just talking about, being the authority to act, by both maintenance and operating men. That is well over a majority of the men working.

Mr. WHITE. Mr. Examiner, I offer this in evidence and ask that it be identified as Intervener's Exhibit 27-A and 27-B?

Trial Examiner FORT. It will be so received as Intervener's Exhibit No. 27-A and 27-B.

(The documents above referred to were received in evidence and marked "Intervener's Exhibits No. 27-A and 27-B.")

4426 By Mr. WHITE:

Q. I believe you stated that this list is more than a majority of all the employees at the Reeves Avenue Power Plant. Is that true?

A. I believe that is true; yes, sir.

4428 Q. Had you discussed in Petersburg or at any other time the general form that you wanted this organization to take?

A. I didn't know what form I wanted it to take.

Q. Had you made up your mind that you preferred that it be a system-wide organization to take in all of the employees of the company, for example?

A. No.

Q. You had no definite ideas as to the form that it would take?

A. That is correct.

4434 Q. I show you a paper dated June 8, 1937, signed Damon M. Tatem and E. T. Diggs, and ask you if you recognize what that paper is?

A. That is a bulletin that I got out—rather, I had Mr. Diggs get out. I think I wrote it in longhand and got him to get it out. I did that on several occasions—two or three occasions.

Q. When you say that you got out a bulletin, to whom did you send that bulletin?

A. It was sent to the various members of the steering

4435 committee.

Q. You sent it to the various members of the steering committee?

A. Mr. Diggs sent it.

Mr. WHITE. I ask that this be received in evidence as Intervener's Exhibit No. 28.

Trial Examiner FORT. There being no objection, it will be received.

(The document referred to was marked "Intervener's Exhibit No. 28" and was received in evidence.)

4437 By Mr. WHITE:

Q. At that meeting there was considerable discussion as to the attitude of the transportation department in respect to organization; wasn't that true, Mr. Tatem?

A. Yes.

Q. And it was decided at that meeting that you would let the transportation department go ahead and draw up its own

organization plan and proceed with your own plan without
4438 considering the transportation; isn't that true?

A. That is right.

Q. You also discussed the constitution, copies of which you had at that meeting, didn't you?

A. Yes. We gave out copies to the members of the steering committee with instructions to carry them back to their respective departments to vote on, and if there were any proposed changes, to make it known to the secretary, and we would notify you.

Q. Now, the next meeting you attended was the meeting at the American Legion Hall on June 15th; isn't that right?

A. That is correct.

Q. You heard Mr. Brown and Mr. Morris testify about that meeting, didn't you?

A. Yes.

Q. Is your recollection substantially the same as theirs as to what took place at that meeting?

A. Yes, I believe it is. I distinctly remember that we voted on each clause. It was read one at a time.

Q. Now, the next meeting you attended was the meeting here in Norfolk on June the 16th at the Navy "Y"; is that right?

A. That is right.

Q. At that meeting did you have a copy of the revised constitution, which had been adopted the night before at the American Legion Hall?

4439 A. I did. I brought one back, I believe.

Q. You brought one back with a pencil memorandum of the changes that had been made; isn't that right?

A. That is correct.

Q. Did Mr. Elliott appear at that meeting?

A. Yes, Mr. Elliott came in to that meeting.

Q. Now, Mr. Tatem, I am going to ask you to state for the record exactly what conversation you had with Mr. Elliott prior to the meeting and then what statement Mr. Elliott made in the meeting.

A. Mr. Elliott came in to the meeting, which was held at the Navy "Y," in the dining room. We were all sitting around tables that were pushed together, talking. The meeting had not been called to order, as I recall, and Mr. Elliott came in and beckoned me to one side. He told me that there were rumors going around that he and the men that he represented in the transportation department were members of the C. I. O., but that that was not true; that he felt that the members that he represented wanted to come in with the rest of the group present and take part in the organization which we were attempting to set up, and asked would

we take him in. I told him we had no choice as to taking him in; that we would have to take him in whether we wanted to or not; that he was at liberty to come in; in fact, it was to the best interest for all that if we presented a united front. I also
4440 asked him if he would not make the same statement to the committee.

Q. Did he make the statement to the committee?

A. He agreed to do it; so I went back to where the rest of the fellows were, and I called the meeting to order, and said Mr. Elliott had a statement he would like to make. He said about the same thing.

Q. Did he say anything to you in the conversation as to why he had changed his mind since June the 9th?

4441 A. He said he was of the opinion that the men that he represented wanted to do it.

Q. Did he tell you that he had gone to Richmond in the meantime to see Mr. Holtzclaw?

A. No, he did not tell me that.

Q. Did he tell you that Mr. Bishop had suggested to him that he join your organization?

A. No. What I just repeated is just about all he said.

Q. In his statement to the committee did he make any mention of Mr. Bishop's name or any other official's name at that time?

A. No.

Q. Was anything said by Mr. Elliott, either to you or to the committee, relative to the attitude that the company had toward the I. O. E.?

A. No; he never said anything along that line.

Q. Now, your next meeting, I believe, was on June the 22nd at the Blair Junior High School; is that right?

A. That is correct.

Q. How was notice of that meeting given?

A. I think—we put a short note in the paper that there would be a meeting, and, of course, all the members on the committee knew the date it was set. A mass meeting was my original idea, and I had suggested it to the committee on the 16th, and
4442 they agreed that it was a good idea, and we appointed two men there to look into a suitable—to find a suitable—place to hold it, because we expected a pretty good crowd.

4444 Q. While you were signing up the members in the I. O. E. at the Reeves Avenue power plant was any effort made from the outside, by any other organization, to solicit members at the power plant?

A. On one occasion there was a representative from another organization came into the plant on a Saturday afternoon.

Q. Who was that person who came into the plant on Saturday afternoon?

A. I was not there at the time, but this gentleman that came over had—one of the men he saw had his name, and the man that came over is Mr. Latham.

Q. This Mr. Latham who appears here?

A. Yes, that is the same name.

Q. And whom were you told he came to see?

A. I had the name of Mr. M. K. Crockett.

Q. Is Mr. Crockett still up there?

A. Yes, he is still there.

4445 Q. Do you know what Mr. Latham came to see Mr. Crockett about?

A. Only from what Mr. Crockett told me, that he came over there to try to get him to join his organization.

Q. According to Mr. Crockett's statement to you, did Mr. Latham solicit Mr. Crockett's membership at Reeves Avenue?

A. He said he did.

Q. Do you know of any other men who were solicited by Mr. Latham at the power plant?

A. I understand that he talked to several. Several of the men told me that he did talk to them.

4446 Q. Those solicitations were for the I. B. E. W., were they not?

A. That is correct.

Q. On the night of June 22nd at the Blair Junior High School meeting, do you know how many men had signed up at that time into the I. O. E. at Reeves Avenue?

A. No, I do not recall that. I do recall that they signed up pretty rapidly. I think we had 100 percent in very
4447 short order.

4450 Q. Mr. Tatem, did you have the members of the Norfolk steering committee sign their names in a notebook and give you their addresses, so that you could reach them, any time you wanted to?

A. Yes; that is correct. They signed it themselves.

Q. And you have a list of those men who were supposed to be representatives on the Norfolk committee?

A. All those men there were duly elected on the committee. I believe there is more than one there from the gas company, and when that happened we took a vote, and only one vote was allowed from that department.

Q. Consequently, you have names of men on this list who were not actually recognized as members of the committee, and as they

all came together they selected one man to cast a vote for that group; is that the idea?

A. That is right. We had one man cast the votes.

Mr. WHITE. The suggestion is that the Reporter copy
4451 this list in at this point.

Trial Examiner FORT. Yes; it will save time to do it that way.

Mr. WHITE. I will ask the Reporter to copy into the record at this point the list of names which I hand him, omitting, however, the telephone numbers and the addresses, as they are all in Norfolk.

Trial Examiner FORT. That will be satisfactory.

(The list of names referred to is as follows:) A. C. Cartledge, R. D. Allison, L. H. Walsh, A. C. Gregory, W. L. Spruell, Charles McIlorney, Anthony R. F. Reutt, R. E. Elliott, M. D. Hough, W. W. Faust, H. C. Rountree, W. C. Morris, J. A. Moon, B. C. Parke, J. W. Williams.

4452 By Mr. WHITE:

Q. Do you recall when you took that list of names down; at which meeting, Mr. Tatem?

A. June 16th.

4453 Q. Did you discuss with your representatives, prior to the meeting at the Nansemond Hotel on July 17th and 18th, 1937, the provisions that you wanted to get into the proposed contract with the company?

A. Yes. They were written down as the men advanced the various requests. They decided themselves.

Q. And did you attend that meeting at the Nansemond Hotel on July 17th and 18th?

A. I did.

Q. You have heard Mr. Faust testify as to what took place down there. Does your recollection agree substantially with what he said took place?

A. Yes.

Q. Who was the Richmond representative on the production operating voting section?

4454 A. Mr. Colonies.

Q. Mr. George Colonies?

A. That is right.

Q. Did you have a conference with him that the two of you work out what you wanted to ask for in your particular voting section in the contract?

A. That is correct.

Q. Do you remember whether you asked for a closed shop?

A. We did; yes.

Q. Why did you ask for a closed shop, Mr. Tatem?

A. Well, the men that I represented wanted a closed shop. I thought it was a good idea myself.

Q. Why did you think it was a good idea?

A. Well, there are several reasons. I thought that inasmuch as everybody would benefit, if there was any benefit from the organization, that they all should be a member of the organization. From past experience, I knew that there probably would be some few who would want the benefits and not be willing to do their share.

4457 Q. I hand you a paper entitled "Minutes of meeting of interdepartmental committee of Norfolk, August 4, 1937," and ask you if those minutes are corect (handing exhibit to the witness.)

A. (After examination of the exhibit.) I recall the meeting at Mr. Hough's house, yes.

Mr. WHITE. I ask that this be received in evidence as intervener's exhibit No. 30.

Trial Examiner FORT. It will be received.

(The document above referred to was marked "Intervener's exhibit No. 30" and received in evidence.)

By Mr. WHITE:

Q. So there was a committee meeting here in Norfolk between the time you came back home from Richmond and the time you signed the contract?

A. That is right.

Q. At which the contract was discussed and reports made by the members of the committee on the attitude of their voting sections?

A. That is right.

4458 Q. Now, on August 5th, I believe the general committee went to Norfolk and signed the contract; is that right?

A. Went to Richmond.

Q. Or went to Richmond and signed the contract.

A. That is correct.

Q. Did you sign it in the morning or in the afternoon?

A. I believe it was around 11 o'clock, or somewhere close to the middle of the day.

Q. Now, in the afternoon, what did you do?

A. I came back to Norfolk to attend the meeting at the Monticello Hotel, to meet with a Mr. Schauffler, I believe the name was.

Q. Was that Mr. Schauffler, the regional director of the National Labor Relations Board?

4459 A. I believe that was his position.

Q. Who was present at that meeting with Mr. Schauffler?

A. Mr. Bertolet and Mr. Underwood from Richmond; Mr. Hough and myself from Norfolk; Mr. White—you—and Mr. Hadlick, and Mr. Schauffler, of course.

Q. Now, you say that that meeting took place at the Monticello Hotel?

A. That is right.

Q. Did you present to Mr. Schauffler that copy of the contract that you had signed with the Virginia Electric & Power Company?

A. Yes.

Q. Did you let him read it over?

A. Yes.

Q. Did you show him at that time a copy of the constitution and bylaws?

A. Yes.

Q. Did you at that time give him a full statement as to the events that had taken place leading up to the forming of the I. O. E.?

A. Yes. He went into it very extensively. He asked many questions and we answered the questions that he asked, to the best of our ability.

Q. At that time did he take notes of what you said?

A. Yes; he did take notes.

4460 Q. How long did this conference last with Mr. Schauffler?

A. If I recall it, it started somewhere around 5 o'clock. We met in his room. We adjourned long enough to have dinner, and we came back and met him in a larger, cooler room, until about—I don't recall exactly—10 o'clock or thereabouts.

4461 Q. At that time Mr. Schauffler was asking questions and you were answering them? Is that right?

A. That is right.

Q. Did he take a statement from all four of you present?

A. Everybody was engaged in answering.

Q. Did you tell Mr. Schauffler at that time practically everything that you have testified to here?

A. Yes, sir; I think so.

4465 Cross-examination by Mr. MOORE:

Q. Who was invited to that meeting of June 22nd according to the notice that was put into the paper?

A. All employees who were eligible for membership in the proposed organization.

4466 Q. During all of this time, Mr. Tatem, from the time you first heard of any activity of any kind in 1937 up to the present moment do you know of any effort on the part of the company to dominate this independent organization of employees or to influence the men with respect to its original forma-
4467 tion or with respect to its administration? Do you know of any effort, any act, or deed that has been done to try to dominate or influence it in its formation or in the administration of it?

A. No, sir. I don't recall any.

Q. To the best of your knowledge and belief has there been anything done by the company in an effort to dominate it or influence its formation or the administration of it?

A. Not so far as I know. There hasn't been any, so far as I know.

Q. Has the organization, to the best of your knowledge and belief, functioned entirely on funds that were derived from the collection of dues from members or has there ever been any financial or other aid given to it by the company, so far as you know and believe?

A. No, sir. There has not been any received so far as I know.

Q. From the company, I mean?

A. Either from the company or from anybody else.

Q. In other words, it is operated entirely on dues from its members?

A. That is right. The dues were the final source of all money in the final analysis.

4471 By Mr. HILTON:

Q. Just before the officials of the company left the auditorium did they tell the men that they could have a meeting and decide whether or not they wanted to form any kind of a labor organization?

A. As I recall the statement was made that they could do anything they wanted to and "we can retire"; and they finally did retire after saying that a number of times.

Q. But you did stay for the meeting of the representatives after the officials had left?

A. I stayed until after they had left. There was no representative from my department.

Q. You stated that there was a great deal of confusion at
4472 this meeting of the representatives. Was it apparent that they did not know what to do?

A. There was nobody in charge of the meeting. It seemed that everybody had an idea that they wanted to do something.

Q. After hearing the speech did you believe a labor organization among the employees of the Virginia Electric and Power Company was necessary?

A. I left that meeting with very little thought about a labor organization. In fact, I was somewhat disgusted with the meeting.

Q. Did you believe at that time that a labor organization was necessary among the employees?

A. I had not given it that much thought.

4477 Q. Now, when was the first time you learned of any committee being formed in Richmond?

A. In conversation with Mr. Underwood on June 3rd.

Q. And did he tell you that they had formed a committee in Richmond for the purposes of forming a labor organization?

A. Yes; I believe he did. We discussed what had been done up there.

Q. And did you tell him that you had a similar committee in Norfolk?

A. We did not have a similar committee at that time. We had a very large group that attended these two meetings.

4478 We evidently had not gotten as early a start as they had up there.

4481 Q. Now, at the meeting on June 3rd at Petersburg did the committee determine upon what kind of organization to form?

A. No. We appointed a committee to engage a lawyer, present to him a general set-up of the company, with instructions to prepare the constitution and bylaws, which had to be voted by the membership. We did not know exactly what we wanted or how to set it up. We left it up to him to submit to us.

Q. All you wanted was some kind of independent organization?

A. That is what we were instructed to do.

4484 Q. Then, on June 11th, you received a letter from Mr. White, and I believe you stated it contained a number of constitutions and bylaws; is that right?

A. We received on that date quite a few copies of the rough draft. It was not finished.

Q. Well, did Mr. White meet with any committee on behalf of these representatives for the purpose of drawing up the constitution and bylaws?

A. We had a committee appointed to wait on Mr. White.

Q. You mean you just left the entire responsibility on Mr. White to get up the constitution and bylaws for you?

A. Subject to approval of the membership, and subject to any changes we wanted to make after it was submitted.

Q. When you received your copies, did you give them to any of the men at the Reeves Avenue plant?

A. I gave copies to each member of the steering com-
4485 mittee as I recall, and we took a vote on it at the meeting at the Reeves Avenue power plant.

Q. You mean the steering committee took a vote on it?

A. No; I mean the employees of the Reeves Avenue plant.

Q. When was it that the employees of the Reeves Avenue plant voted on the constitution and bylaws?

A. They voted to accept the constitution and bylaws as proposed.

Q. Well, when was that?

A. Between the 11th and the 15th.

Q. How did they vote; how was the vote taken?

A. We read the constitution and bylaws and voted on it, paragraph by paragraph, for or against.

Q. How many men were present at that meeting?

A. I don't recall the actual count, but at most of our meetings we had at that time practically everyone that was off. Of course, we have one shift on all the time.

Q. Well, was it a hundred and fifty, or how many was it?

A. Forty-five or fifty.

Q. Where did you hold the meeting?

A. Reeves Avenue auditorium.

Q. Did you have permission to use the auditorium?

A. I don't believe that we did. I didn't have permission.

Q. Who is the superintendent of the Reeves Avenue plant?

A. Mr. L. E. Davis.

4486 Q. Well, do you mean, as far as you know, you just went in there and used the auditorium without permission from Mr. Davis?

A. That is correct. The key to the building, at that time we did—or, rather, there is a key on the switchboard, and of course, I suppose we are supposed to have permission, but it is not absolutely necessary.

Q. Well, did you take it for granted that you could use the auditorium for that purpose?

A. The meeting was not called at my suggestion. It was called by Mr. Jones. We didn't ask for permission.

Q. Have you ever used the auditorium before without having permission?

A. I don't recall getting permission to use it. The only time we used it as a social club, as we have, we used it any time we wanted to.

Q. And you always got permission to use it for that purpose, did you not?

A. I never got permission to use it for any purpose.

Q. Was anything ever said to you for having that meeting in the auditorium of the Reeves Avenue plant?

A. I don't know, but I doubt whether they knew of it, that we even had the meeting. It was held at night.

Q. What time of the night?

A. Around 8 o'clock.

4493 Q. Do you recall how your organization was recognized by the Virginia Electric & Power Company as the bargaining agency for its members?

A. Yes; we presented signed cards, showing the majority of each department was represented by the general committee.

Q. To whom did you give those cards?

A. We had cards present when the meeting opened. I think Mr. White had either shown Mr. Moore the cards or had vouched for the fact that we had them. I don't recall whether Mr. Moore looked at them or not.

4494 Q. Well, did you let the Richmond office handle the matter of obtaining recognition in any manner they wished to do so?

A. No; I felt that we were protected by our counsel, Mr. White.

Q. In other words, you left the entire matter of recognition up to Mr. White?

A. Well, the recognition, of course, was from the fact that we had a majority of the cards. The cards were mailed in to the general secretary in the Richmond office, and the matter of proving that we did represent a majority through the cards was Mr. White's job, I think.

4498 Q. Did you give the men in the Reeves Avenue plant, Mr. Tatem, an opportunity to vote on the agreement before it was signed?

A. I came back with a copy. They were rough copies, partly typed, and I had rough copies of the agreement. By "Rough" I mean it was not bound together or anything of the sort. I told them what had been done. Of course, as I said before, I had some leeway as to whether to sign or not sign it. The electric division committee had voted on that Sunday to accept the contract for its members.

Q. Did you submit the agreement that you were going to sign to any of the men, that is, the employees at the Reeves Avenue plant before it was actually signed?

A. The men at the Reeves Avenue plant were informed as to what had been secured; yes.

Q. How did you inform them as to what had been secured, Mr. Tatem?

A. I think that information was given around by the committee at the plant.

Q. Did you call any meeting in the auditorium at the Reeves Avenue plant for that purpose?

A. No, sir. We didn't have any meeting in the Reeves
4499 Avenue Plant after the meeting on or about the 13th. I don't recall whether we had a meeting and discussed that or not. I do remember that it was discussed pretty generally all over everywhere as to just what had been secured. In fact, on Sunday night I telephoned back to the plant just about what action had been taken, and by the time I got back to Norfolk it was pretty generally understood just what had been done.

Q. But no actual vote was ever taken on the agreement, was there?

A. I don't believe we took an actual vote.

Q. Did you take any vote on the agreement after it was signed?

A. To whether or not it was acceptable?

Q. That is right.

A. The vote had already been taken previously. The representatives were authorized to act for the men at the plant.

Q. But I am asking you whether you ever did give the men an opportunity at the Reeves Avenue Plant to vote on the contract before it was signed?

A. I considered they had the vote before it was signed.

Q. You stated that on June 9th Mr. Underwood attended this meeting which Mr. Elliott had called in the Transportation Department at the car barn. Do you recall that?

4500 A. Yes, sir.

Q. Did you believe it was proper that Mr. Underwood attend this meeting at the car barn in your behalf?

A. I would rather have sent somebody else. Mr. Underwood was the only man that I could think of in that short period of time to get into touch with. I did know how to get into touch with him.

4501 Q. Mr. Hilton asked you about calling Mr. Underwood some time early in the organization activity last year and
4502 asked you whether you had used the company phones, and you said you phoned from your house. Did you mean by that that you did not use the company phone?

A. No: I meant I called from my house. I called the P. B. X. Board there in the office building.

Q. That is the Virginia Electric and Power Company office building?

A. That is right.

Q. And it went through that to the number you were asking for?

A. Yes.

Q. Was that usual in negotiations, that you use the company phones?

A. You see on the switchboard we have two private lines, that is, we have a private line and have a carrier current, as we call it, or what is a carrier current. That is a transmission line used for telephoning. The switchboard operators carry on business between the Richmond system operators in operating the plant at Reeves Avenue. They used it today.

Q. I was asking you if you used it in connection with these proceedings?

A. Do you mean at any other time?

Q. Yes.

A. Yes; I used the phone.

4506 Q. Didn't you understand what Mr. Hilton was asking for when he asked you about that?

A. Yes. The company didn't know that I was using it.

4507 Recross-examination by Mr. Moore:

Q. Did you ever ask permission of anybody to be switching over from your business discussions, which was the customary thing over those lines, to a discussion on a personal matter or a matter relating to the organization? I mean did you ever ask for permission to use it for one or the other, perhaps, or did you go ahead and simply use it if you saw fit, without anybody's permission?

A. No, sir; I didn't ask permission from anybody. Whenever I used it I was in the telephone booth by myself.

Q. Some question was asked you about this meeting in the Reeves Avenue power station, Mr. Tatem, where you were selected to be a representative, and you referred to it as an auditorium. Isn't that simply a recreation room where there is a pool and other facilities there for the men to use, Mr. Tatem?

A. Yes.

Q. At whatever time they want to?

A. That is right. We have a pool table up there, and they use the room.

Q. So far as you know don't the men go in and out there and make coffee for themselves and use it as a place in which to relax and as a general recreation plant?

A. There are no restrictions on it that I know of, Mr. Moore. We have a kitchen adjoining it and we have equipment
4508 in there that belongs to the Social Club.

Q. Mr. Tatem, would you have felt that there was any need for asking for permission from anybody in the management to have gone in there to have meetings among the employees?

A. No, sir.

Q. Would you have felt that there was any occasion to do it, or, Mr. Tatem, would you have felt free to go ahead and do it and use it for whatever purpose you wanted to use it, unless you had been prohibited from using it?

A. I would feel that it was all right to do it as long as employees who were working there in the plant were the ones who were doing it.

Q. And, so far as you know, Mr. Tatem, there was no specific permission obtained?

A. No, sir.

4509 By Trial Examiner FORT:

Q. On this set-up, as I understand it, this telephone system is purely for company business.

A. That is supposed to be used purely for company business.

Q. Now, in making this call from your house, don't you have to go through an exchange?

A. Yes. I called the operator at the board and told her I would like to talk to Richmond.

Q. She did not ask any question about the character of the call?

A. I know her.

Q. Did you tell her that the call was on official business?

A. No.

Q. She did not ask you?

A. No, sir.

Q. And she got the Richmond office. What is the set-up at the Richmond end? Do they have an operator there?

A. They have a Richmond operator the same as we have. I asked her to let me have Mr. Underwood and she put him on.

Trial Examiner FORT. I have nothing further.

By Mr. MOORE:

Q. In other words, all you need to do to carry through that operation is simply to dial from your home the Norfolk central operator, tell her you want the Richmond operator, you get the Richmond operator, then the Richmond operator sets the

4510 dial to anyone you want to get; is that it?

A. Yes. She would not answer if she knew where the call was coming from. I do not think they would allow a call to go through for every employee. In fact, I know they would not, because I have seen attempts to use it before; but due to the fact that switchboard operators are constantly using the

'phone they just know each other—their name is familiar: their voice is familiar—and I just use it at any time I want to, to save a long distance call.

4515 N. R. JONES, a witness called by and on behalf of the intervener, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. WHITE:

Q. Please state your full name.
A. N. R. Jones.
Q. Where do you live, Mr. Jones?
A. 228 35th Street.
Q. Norfolk?
A. That is right.
Q. And by whom are you employed?
A. Virginia Electric & Power Company.
Q. In what capacity?
A. Switchboard operator.
Q. Do you work at the Reeves Avenue plant with Mr. Tatem?
A. Yes, sir.

Mr. WHITE. Mr. Examiner, if it is agreeable, I think it would save time to permit me to lead this witness to some extent on this formal part of the examination.

Mr. HILTON. All right.

Trial Examiner FORT. I have no objection.

By Mr. WHITE:

4516 Q. Mr. Jones, when was the first that you heard of any labor organization activity among the employees of the Virginia Electric & Power Company?

A. The first I heard of any activities was probably the action that was taken at Reeves Avenue following the meeting on May 24th, I believe it was.

Q. Did you go to that meeting on May 24th?

A. Yes, sir.

Q. Did you go as a delegate or, just as Mr. Tatem did, did somebody call you up and tell you were supposed to be at the meeting, and you attended?

A. When I got home that afternoon my wife told me that somebody called, there was supposed to be a meeting, and so I went.

Q. So you were not a delegate or emissary to that meeting, but you just went because somebody was supposed to go; is that right?

A. Yes, sir.

Q. Did you hear Mr. Tatem testify as to what took place at that meeting on May 24th, at the auditorium of the Virginia Electric & Power Company Building?

A. I heard part of his testimony. I wasn't here when he was put on the stand, but I did hear that part of it.

Q. You did hear that part of it?

A. Yes, sir.

Q. And that is substantially in accordance with what
4517 you recollect about it?

A. Absolutely.

Q. Mr. Tatem testified that you held a meeting which he did not attend at Reeves Avenue, at which certain representatives or delegates were elected. Did you call such a meeting?

A. Yes, sir.

Q. Where did you call it?

A. Do you mean——

Q. Where was it held?

A. In the auditorium at Reeves Avenue.

Q. At Reeves Avenue?

A. Yes.

Q. When was that meeting?

A. June 27th.

Q. May 27th.

A. I beg your pardon—May 27th.

Q. May 27th?

A. Yes, sir.

4518 Q. And Mr. Tatem was elected——

A. As representative of the production operators.

Q. And you were elected chairman of that group?

A. I was.

Q. I will ask you, were the people who attended that meeting supposed to be on duty?

A. No, sir.

4520 Q. Is it customary for the men to use that auditorium up there without consulting the management about it, if they want to?

A. So far as I know there never was a question about it.

Q. In other words, they feel it is their headquarters and subject to their own control; is that right?

A. That is right.

Q. Although the property belongs to the company.

A. Yes, sir.

4521 Q. To go back to the May 27th meeting, was there any action taken at that meeting with respect to the form of the organization, if any, that the men wanted to have there?

A. They decided they wanted an independent organization.

Q. Was a vote taken on that?

A. Yes, sir.

Q. How was the vote; how did it come out?

A. I don't remember the—well, it was unanimously for the independent. There wasn't any vote at all for either one of the other organizations.

4522 Q. I hand you a paper entitled "Minutes of Meeting held at Reeves Avenue Auditorium, June 14, 1937," and ask you if these are the minutes of the meeting that you are referring to [handing the document to the witness].

A. (After examination of the document.) Yes, sir.

Q. Do they correctly record what took place at that meeting?

A. To the best of my knowledge; yes.

Q. At that meeting you acted as chairman, and Mr. Steele—C. G. Steele—acted as secretary; is that right?

4523 A. That is right.

Mr. WHITE. Mr. Examiner, I offer this in evidence as intervener's exhibit No. 31, and ask that it be received.

Trial Examiner FORT. I would like to ask when those minutes were prepared.

The WITNESS. Mr. Steele made notes that night.

Trial Examiner FORT. It will be received.

(The document above referred to was marked "Intervener's Exhibit No. 21" and received in evidence.)

4526 By Mr. WHITE:

Q. When was the first that you heard from Mr. Eugene T. Underwood relative to this organization activity that was going on, as you testified, just subsequent to May 24, 1937?

A. I don't remember the date exactly. It was around the 28th or 29th of May, the first time I talked to him.

Q. Did he talk to you over the company telephone?

4527 A. Well, I was at work.

Q. You were at work?

A. Yes, sir.

Q. On the switchboard?

A. That is right.

Q. And he talked to you then?

A. That is right.

Q. What did he say at that time?

A. He asked me, to the best I remember, what was being done about the organization in Norfolk.

Q. Did you tell him what the situation was here?

A. I told him I knew very little about it, and we had a meeting on the 27th. I don't know just whether it was the day before or a couple of days before. We had a meeting at which Mr. Tatem was elected representative of the production operating men.

Q. When was the next you heard from Mr. Underwood?

A. It was the first of the week following. I don't remember the date. I don't remember that—the next date. There is one date I remember, and that is the only one I remember particularly the date.

Q. You said he talked to you on the 28th or 29th, and on the first of the following week he talked to you again?

A. About the 1st or 2nd of June.

Q. What was that conversation about; what did he say to
4528 you?

A. He asked me if I knew who the chairman of the Norfolk organization was—that is, the Norfolk committee.

4529 Q. Did you know?

A. I did not.

Q. Did you find out?

A. Yes, sir.

Q. Did you give him the information?

A. Yes, sir.

Q. Whom did you tell him was the chairman?

A. Mr. Nickerson, I believe.

Q. Was that all of the conversation that you had with Mr. Underwood at that time?

A. That was the essential part of it. That is all I remember.

Q. When was the next conversation that you had with Mr. Underwood.

A. The next morning, June 3rd. I say, the next morning. It was June 3rd, the best I remember. It was the day after this conversation took place.

Q. Do you think the other conversation, when you gave him Mr. Nickerson's name, was on June 2nd, and then you had another conversation with him on the morning of June 3rd?

A. I know it was the third I had the third conversation with him.

Q. What was the nature of that conversation with him?

A. He called me at my home, and he asked me why the representatives from Norfolk were not at the meeting at Petersburg
4530 the night before.

Q. Did you know anything about the Petersburg meeting at that time?

A. No, sir.

Q. So you could not tell him anything?

A. No, sir.

Q. After you talked to Mr. Underwood, what did you do?

A. I called Mr. Tatem.

Q. What did you tell Mr. Tatem?

A. I asked him if he knew anything about the meeting at Petersburg.

Q. Had he heard anything about the meeting at Petersburg?
A. No, sir.
Q. As a result of that conversation, what action was taken?
A. Well, the only thing that I could testify was Mr. Tatem called me back later, that he got in touch with Mr. Underwood.
Q. Did he ask you to do anything for him?
A. Yes, sir.
Q. What was that?
A. He asked me—he told me what Mr. Underwood had told him, and then he asked me if I would get all the men I could to sign an agreement that he would represent us at the Petersburg meeting.
Q. Was that your day on duty or day off?
A. I was going on at 3:30 in the afternoon.
4531 Q. You were going on at 3:30 in the afternoon?
A. And this was in the morning.
Q. Did you get that list for him?
A. Yes, sir.
Q. I hand you Intervener's Exhibit No. 27-A and B and ask you if that is the paper that you had signed up for Mr. Tatem [handing the exhibit to the witness]?
A. (After examination of the exhibit.) Yes, sir.
Q. Did you go to the meeting at the Navy Y. M. C. A. on June 16th?
A. No, sir.
Q. You did not?
A. No, sir.
Q. You are a member of the production operating voting section of the I. O. E.?
A. That is right.
Q. Prior to the election on July 2nd, 1937, how many men in your voting section had been signed up?
A. July 7th?
Q. July 2nd, the time you had your election.
A. I don't know exactly.
Q. What percentage would you approximate?
A. More than 90 percent.
4533 Q. Except for these meetings on May 27th and June 14th, have there been any meetings of this organization that you know about at Reeves Avenue on company property?
A. No, sir.
Q. Is it customary among the employees at the switchboard to use that line whenever it is open for the purpose of talking to somebody interdepartmentally who is also available on the same line?

A. Yes, sir.

Q. Do you have to get permission from anybody in the company to do it?

4534 A. No, sir.

Q. Does any official in the company know it when the woman on the switchboard, let us say, puts through a call like that?

A. I would suppose not. Do you mean the telephone switchboard or the plant transmission board?

Q. First, Mr. Jones, take the transmission board.

A. No, sir; they wouldn't know about that.

Q. What about the telephone switchboard?

A. No, sir. I would assume they did not. I am sure they don't know.

Q. They do not?

A. No, sir.

4537 Cross-examination by Mr. HILTON:

Q. Had there been any confusion in your mind with respect to your right to form, join, or assist any labor organization before the speech of May 24th, 1937?

A. There had not.

Q. Had any of the men at the Reeves Avenue Plant ever talked to you with regard to labor rights concerning their joining any labor organization?

A. No, sir.

Q. Did you, in your contact with your fellow employees, observe from their attitude that there was any ignorance, let us say, on their part as to their rights under the Wagner Act?

A. Do you mean in our discussions among ourselves?

Q. Yes; that is right.

A. No, sir.

Q. Did any of your foremen ever talk to you about any labor organization?

A. No, sir.

4538 Q. Did you ever ask any of your foremen or supervisors for any advice in connection with forming or joining any labor organization?

A. No.

Q. Had you ever been a member of any labor organization yourself?

A. Yes, sir.

Q. Was the I. O. E. the first labor organization you were ever a member of?

A. It was.

Q. Had you had any experience at all in the formation of any labor organization before your connection with the I. O. E.?

A. No, sir.

Q. Had you ever read, let us say, a labor constitution and by-laws?

A. I don't recall that I have.

Q. Did you ever attend any labor meetings?

A. No.

Q. You had no idea whatsoever as to how to form any labor organization prior to May 27th or May 28th, 1937?

A. That is right. I have never given it any thought.

4542 Q. Had you received any information or advice between May 24th and May 27th, when you told them that a meeting would be necessary?

A. No, sir.

Q. How did you happen to hit upon that plan?

A. They wanted a representative and they asked me to be the representative. I felt that the only way to get an authoritative representative would be to elect one.

Q. Had you heard of any meeting being held in Richmond on the 26th?

A. No, sir.

Q. Were you advised that a meeting was to be held in Richmond, on, let us say, the 27th, where a plan similar to yours was being followed?

A. No, sir.

4543 Q. Who presided at the meeting on the 27th? Was it yourself?

A. Yes, sir.

Q. Did you explain to the men that they had a right to vote on whether or not they would go into the A. F. of L., the C. I. O., or the independent organization?

A. That was explained; yes, sir.

4544 Q. Just tell us what three terms you used when you were telling the men they should vote on what kind of an organization they wanted.

A. The A. F. of L., the C. I. O., and the Independent.

Q. Do you recall how many men were there at that meeting?

A. There were between 40 and 50.

Q. Did that represent a majority of the employees at the Reeves Avenue Plant?

A. It represented a majority of the production operating.

4546 Q. You did not have permission to use the building or the auditorium on the night of the 27th, did you?

A. It was the afternoon of the 27th.

Q. I mean the afternoon.

A. I asked Mr. Davis, the superintendent, if he thought there would be any objection the auditorium, and he said that, so far as he knew, there was not.

Q. So you did have permission to use it?
A. That day.
Q. Did you tell him why you wanted to use that day?
A. I don't recall that I did.
4547 Q. The next meeting you attended after May 27th was the meeting of June 14th?
A. Yes, sir.
Q. And that was also held in the auditorium of the Reeves Avenue Plant?
A. Yes, sir.
Q. Did you have permission to use the auditorium that time?
A. There was no permission asked, so far as I know.
Q. You yourself did not ask permission, did you?
A. No, sir.
4560 Q. Had you talked with Underwood in connection with the formation of this organization before May 28, 1937?
A. No, sir.
Q. Had you talked with anyone else in Richmond in connection with forming this organization?
A. No, sir.
4564 Q. Now, when was it that you started your drive for membership in the I. O. E.?
A. You mean when we started up signing cards?
Q. That is right.
A. I don't remember the date, but after the cards—immediately after the cards were issued.
4565 Q. Well, did you receive any instructions that you could not solicit the men on company property during working hours.
A. Yes, sir.
Q. Who told you that?
A. Mr. Tatem said it was Mr. White's instructions.
Q. Did you, in turn, tell the men to whom you gave the cards that they could not solicit on company time or company property?
A. I don't know that I did that. It was generally under-
4566 stood, though, because the men were afraid that there would be some question about company domination.
4570 Q. And, now, would it be ordinary and usual for an employee, from his home, to call the switchboard operator
4571 and ask for some other employee in Richmond, which you would call?
A. The telephone operator, but I wouldn't know about that.
Q. I mean, is that the usual thing: does that happen ordinarily?
A. I don't think so.

Q. Did you ever call the telephone operator and ask for somebody in Richmond, some employee in Richmond that you would want to talk to?

A. Not from my home.

Q. Would that be a usual or unusual thing to happen?

A. I would consider it unusual. In fact, I don't think the employees generally have that privilege.

Q. What employees would have it?

A. I don't know of any employees that would. Probably some of the officials would. I suppose the officials would, but the employees wouldn't have it, as far as I know.

Q. Could any employee do it without official permission?

A. As far as I know, they could not.

4576 C. GALE WALLACE, a witness called for and on behalf of the intervener, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. WHITE:

Q. Will you please state your name?

A. C. Gale Wallace.

Q. You live in Norfolk?

A. Yes.

Q. And you are employed in the line department at Cove Street?

A. Yes.

Q. What is your classification?

A. Second-class lineman.

Q. Do you know J. L. Judge?

A. Yes, sir.

4577 Q. Mr. Wallace, Mr. Judge testified at page 1104 of the record that he had a conversation with a Mr. Toots Wallace. Are you referred to as Toots Wallace?

A. Yes, sir.

Q. He stated that this conversation occurred at the Woodmen of the World Building shortly after you joined the I. B. E. W. and that you told him that you had asked for a raise and that Mr. Faust had told you that Mr. Holik said that you were one of those I. B. E. W. men and that he couldn't do anything for you.

Q. Did you have any conversation with Mr. Judge at the Woodmen of the World Building along the line that I have just read to you?

A. We had a conversation there, but there was nothing about that.

Q. Did you tell him that Mr. Faust had said anything to you about the fact that you could not get a raise because you were a member of the I. B. E. W.?

A. No.

4578 Q. Are you a member of the I. B. E. W. now?

A. No, sir.

Q. Do you remember ever telling Mr. Judge any reason why you dropped your membership in the I. B. E. W.?

A. He never asked me.

Q. On page 1104 of the record the following appears in Mr. Judge's testimony. I am quoting from the record:

4579 "Q. Have you asked him to renew his membership in the I. B. E. W.?

"A. I have; yes, sir.

"Q. Has he given you any promises or any reasons for not doing it?

"A. He gave me reasons for not doing it. He said that everything we do up there is brought back to the company and he is afraid to do it.

"Q. It is in fear of the company that he does not?

"A. Absolutely."

That was referring to the reasons you gave for not going back into the I. B. E. W. Did you ever have any such conversation as that?

A. Nobody ever asked me to go back into the I. B. E. W., none of them, not only him but none of the rest of them.

Q. Did you ever tell Judge or any other member of the I. B. E. W. that the reason you did not go back was because everything came back to the company?

A. No.

4580 Cross-examination by Mr. MOORE:

Q. Was there anybody in the management and of the company, any superintendent or foremen or anybody among the bosses who tried to influence you to give up your membership?

A. No, sir.

Q. Why did you give it up?

A. I don't know. I reckon I just didn't want to be in it any more. I didn't see any use in paying two dues for nothing.

Q. At any rate, you were not in any way influenced by anybody in the management of the company as to your decision on that?

A. No, sir.

4598 Q. Were you solicited to join the I. B. E. W. while you were working with any of the fellows?

A. I had them come around and give me a paper.

Q. I said while you were at work in the regular way.

A. Yes, sir.

Q. Who solicited you?

A. Smoky Staunton, Davis, and Johnnie Judge. I had a truck, a big truck by myself, and there was hell to pay from then on until I left.

Q. Were they on your truck?

A. No; they were on their truck, but there was hell to pay until I got away from them.

4599 Q. While all four of you were at work?

A. They were working on their poles.

MALCOLM K. CROCKETT, a witness called by and on behalf of the intervener, being first duly sworn, was examined and testified as follows:

4600 Direct examination by Mr. WHITE:

Q. Mr. Crockett, where do you live?

A. 2921 Somme Avenue.

Q. In Norfolk?

A. Yes.

Q. By whom are you employed?

A. The V. E. & P. Company.

Q. And in what capacity?

A. Water tender.

Q. At the Reeves Avenue power plant?

A. Yes.

Q. Mr. Crockett, please state whether you were solicited on company property by a representative of the I. B. E. W. at any time in 1937.

A. I was.

Q. Do you recall whether it was in the month of June or July?

A. I think it was in June. I am not sure; I think it was in June.

Q. Now, who solicited your membership in the I. B. E. W.?

4601 A. A fellow by the name of Latham.

Q. Where were you when he solicited your membership?

A. In the boiler room on duty.

Q. In the boiler room at the Reeves Avenue plant?

A. Yes.

4603 Q. Please state exactly what happened, according to your best recollection?

A. This gentleman came up to me, down at the door where I was standing, and I told him my name, naturally, and he made

himself known. He told me he was affiliated with the A. F. of L., and understood that the fellows over there wanted to get in something like a union, or something like that. I told him we had one started, and I didn't wish to have anything to do with anything else but the one we had under way.

4619 JAMES W. GUNTER, a witness called for and on behalf of the Intervener, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. WHITE:

Q. Will you please state your name?
A James W. Gunter.
Q. Where do you live?
A. 724 35th Street.
Q. In Norfolk?
A. Yes.
Q. By whom are you employed?
A. The Virginia Electric and Power Company.
Q. In what capacity?
A. Electrician; Reeves Avenue Plant.
Q. Mr. Gunter, did you hear Mr. Crockett testify just now?
A. Yes.
Q. Are you the Mr. Gunter he referred to as having seen talking to Mr. Latham at the Reeves Avenue Plant?
A. Yes.
Q. Do you recall the approximate date?
A. It was somewhere in the latter part of June, on Saturday afternoon, if I am not mistaken.
Q. 1937?
4620 A. Yes.
Q. Did Mr. Latham talk to you?
A. A very little bit; yes.
Q. What did he say to you?
A. He came into the switchboard. He was talking with the switchboard operator, and the operator called me and said, "This gentleman wants to see Mr. Crockett. Take him over to the boiler room and show him Mr. Crockett." So I carried him on over, and Mr. Crockett and Mr. Jones were in the boiler room talking together, and he made himself known as Mr. Latham, of the American Federation of Labor, and he said, "I understand you boys are thinking of forming an organization and I hate to see you go off on the wrong foot. I would like to see you get lined up right and I would like to help you out." I was real busy at the time and I didn't stop to hear all of the conversation. I wasn't interested in it. As soon as I found out what he was representing I just got away from him as quick as I could.

Q. Did you tell him anything at the time?

A. I told him I wasn't interested, that I had been in the American Federation of Labor once and had been called out twice in one day on a strike, so I didn't want to get tied up in it again unless it was necessary.

4621 Q. What organization of the American Federation of Labor did you belong to?

A. The I. B. E. W.

4622 Cross-examination by Mr. HILTON:

Q. Mr. Latham did not make any secret of his visit there, did he?

A. I don't think so.

4635 COLIN G. STEELE, a witness called for and on behalf of the intervener, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. WHITE:

Q. Will you please state your name?

4636 A. Colin G. Steele.

Q. Where do you live?

A. 123 East Thirty-ninth Street.

Q. In Norfolk?

A. Yes, sir.

Q. By whom are you employed?

A. The Virginia Electric and Power Company.

Q. In what capacity?

A. Mechanic.

Q. At the Reeves Avenue Power Plant?

A. Yes.

4637 Mr. WHITE. How about stipulating that he would testify to what the rest of the witnesses testified to?

Mr. HILTON. All right.

Mr. WHITE. Then it is stipulated that this witnesse would testify substantially in the same manner as Mr. Faust and Mr. Tatem as to what took place at the meeting of June first, 1937, at the V. E. P. Auditorium.

4638 By Mr. WHITE:

Q. Mr. Steele, did you attend a meeting in the Reeves Avenue plant on or about May 27, 1937?

A. I did.

Q. Is your recollection substantially the same as his as to what took place at the meeting on May 27th?

A. Yes, sir.

4639 Q. Who signed up most of the members of your voting section at Reeves Avenue?

A. The members in my voting section were handed their cards by me. They carried them home and returned them to me either the next day or a few days later.

Q. What percentage of your group did you sign up prior to July 2nd, 1937?

A. I had 37 men in my department, and I had 34 of them signed up.

Q. You attended the meeting at the Nansemond Hotel on July 17th and 18th, did you not?

A. I did.

Q. And whom did you meet from Richmond as representative of the same voting section in Richmond that you represented here in Norfolk?

A. Mr. Robertson.

Q. Did you hear Mr. Faust testify as to what took place at the Nansemond Hotel?

4640 A. I did not hear his testimony: I read it.

Q. You have read his testimony?

A. I read it; yes, sir.

Mr. WHITE. Will you stipulate that his testimony will be the same?

Mr. HILTON. Well, I am willing to stipulate.

Mr. WHITE. It is stipulated that this witness would testify to substantially the same state of facts in regard to the meeting at the Nansemond Hotel on July 17th and 18th, 1937, as Mr. Faust has already testified.

Mr. HILTON. The witness having read his testimony.

Mr. WHITE. The witness having read his testimony.

4641 By Mr. WHITE:

Q. Now, Mr. Steele, you are not a member of the general committee, are you?

A. No, sir.

Q. And you took no part in the negotiation of the contract in Richmond on July 30; is that correct?

A. No part in the actual negotiation; no.

Q. You were in Richmond, were you?

A. I was.

Q. Along with the other members of the interdepartmental committees from Richmond and Norfolk?

A. I was present.

Q. Was that contract brought back to you to be voted on?

A. The members of the electric division committee voted on it.

Q. Did you vote in favor of it?

A. I did.

Q. Did you, between August the 1st, 1937, and August 5th, 1937, in any way bring that contract back to the men you represented?

A. I did.

Q. In what way did you bring it back?

A. I returned to work on Monday morning and read it to the men Monday afternoon the first time.

Q. And did they approve of what the contract said?

A. They did.

4643 MALCOLM K. CROCKETT resumed the stand and testified further as follows:

Cross-examination by Mr. HILTON:

Q. Mr. Crockett, did you attend that speech of Mr. Throckmorton's on May the 24th, 1937?

A. Yes, sir.

Q. You did not attend it as a representative of any kind, did you?

A. No, sir.

Q. Do you recall Mr. Throckmorton making any remarks about petitions that the company had received with respect to working conditions?

A. I recall him stating that he had received—or the company had received petitions from several groups. He did not state which groups.

Q. And after the speech did you ask any questions?

A. I did not.

Q. Before that speech had there been any doubt in your mind as to your right under the National Labor Relations Act to form, join, or assist any labor organization?

4644 A. No. I had read the Act myself.

Q. Had any of the men at the plant ever discussed that with you?

A. Not that I recall.

Q. Did any of the men ever express to you any doubt as to their right to form, join, or assist any labor organization?

A. No, sir.

Q. Now, after the speech were you of the opinion that the company desired to deal with a union which was system-wide?

A. The impression I got from the proceedings at that particular meeting was that the company was willing to deal with any group providing it showed a majority of the employees, but as I understood their stand at that particular time they had been

approached by several groups which did not show a majority of the employees.

Q. Now, when you say the company was willing to deal with any group, do you mean, say, the transportation group in Norfolk, Richmond, Petersburg, and Portsmouth?

A. Well, that was not specified.

Q. Well, was that your understanding?

A. That was just my impression, that is all.

Q. And it was your understanding that in the electric department of the V. E. P. the company desired to deal with the entire electric department as distinguished from dealing with the
4645 Norfolk division, the Portsmouth department, and so forth: is that right?

A. In order to show a majority it would have to be both places.

Q. Well, I mean it would be the entire electric department?

A. That is correct.

Q. As distinguished, say, from the Cove Street plant and the Reeves Avenue plant?

A. That is correct.

Q. Had you ever been a member of any labor organization before?

A. No, sir.

Q. Did you ever take any interest in any labor organization before May the 24th, 1937?

A. No, sir.

4646 Q. And where was that meeting held?

A. If I recall correctly, it was in the storeroom just adjoining the shop, at the street entrance.

Q. Did you call the meeting yourself?

A. No. It was just suggested that we have a representative to call all the meetings. Somebody said, "Where are we going to meet?" I said it did not make any difference where we are going to meet.

Q. Who suggested that this meeting be held on May 27th?

A. I think that was called by Mr. Jones.

Q. And how did Mr. Jones advise the men that a meeting would be held?

A. By word of mouth; just whoever passed.

Q. And about how many men were present at that meeting from the shop and maintenance division?

A. From the shop and maintenance there were only two.

Q. Just two?

A. Yes.

Q. And how many were in the shop and maintenance department at that time?

A. 37.

Q. Well, what happened to the other 35?

4647 A. Well, the two that attended were the men—Mr. Wright and myself had been elected during lunch, and we attended the meeting on behalf of the other men.

Q. What I am trying to find out is how you and Wright were elected by the shop and maintenance men.

A. I could not answer for Mr. Wright. I was elected during lunch time. The men all got together. I was nominated, and everybody voted for me by holding up their hand.

4652 Q. Did you sign up any of the men in the I. O. E.?

A. I didn't actually sign up any of them. I gave them the cards.

Q. Were you working when you gave them the cards?

4653 A. No; I gave them to them during lunch hour or after I had knocked off from work.

Q. I mean, during working hours, did you carry cards through the plant with you?

A. No, sir.

Q. How many of those cards did you have in the plant, in your locker?

A. Well, I don't know the exact number I had, but probably forty.

Q. And you gave them out at lunch hour?

A. During lunch hour and after work.

Q. Did any of the men have any objection to signing those cards?

A. Three out of 37.

Q. And did you ever sign up the 3 that had objections to it?

A. I did.

Q. What was their objection to signing?

A. They never gave any objection to me. They just didn't return the cards; so then I asked them, and they finally gave them to me.

4654 Q. Did you give any reasons as to why the men should become members of the I. O. E.?

A. No, sir.

Q. At that time, did you believe that any organization was necessary among the employees of the V. E. & P. Co.?

A. Not particularly.

Q. You did not believe any outside organization was necessary, did you; such as the A. F. of L. or the C. I. O.?

A. I didn't believe either kind was particularly necessary.

4655 Q. Did you see this proposed agreement which the I. O. E. submitted to the company on July 30, 1937?

A. Parts of it I had seen before it was submitted.

Q. Did you ever have any discussion with any of the men in your department in connection with that proposed agreement?

A. Oh, yes.

Q. Was any vote taken by the men on that proposed agreement?

A. That part affecting my particular section was voted on by my section.

Q. Was that an open meeting of the men in your department?

A. It was.

Q. Where was that meeting held?

A. At the Monticello Arcade.

Q. How many were present there?

A. You got me there. I don't know.

Q. Did you say a majority of the men in your department were present?

A. Yes.

4656 Q. Did you take that agreement to the men on August 1st?

A. That is correct.

Q. Was any meeting held then?

A. The meeting was held that night, but during the lunch hour on August 1st I read it to them, just to give them an

4657 idea of what had happened, so that they would quit asking me questions about it.

4663 By Trial Examiner FORT:

Q. You never heard of an independent union discussion before May 24th?

A. I didn't hear of any kind of a union.

Q. Well, did you hear it on the 24th?

A. No, sir; I did not.

Q. Did you hear it on the 25th?

A. I expect I did. I think there was a lot of talk going around on the 25th.

Q. That is, among the men in your organization?

A. Yes.

Q. Do you remember if they had discussed an independent union at that time?

A. No, I do not.

Q. Do you remember hearing it discussed at that time?

A. Well, I discussed it with a lot of people myself, that if we were going to have a union which kind we would like to have.

Q. That is what I want to get at. How did you happen to discuss that?

4664 A. Well, just thinking about it. I don't like particularly the C. I. O., and I don't particularly dislike them, and I don't like particularly the A. F. of L. or I don't particularly dis-

like them, but if we were going to have a union to try to have an independent one.

4668 ARTHUR E. BERTOLETT, a witness called by and on behalf of the intervener, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. WHITE:

Q. Please state your full name.

A. Arthur E. Bertolett.

Q. Where do you live, Mr. Bertolett?

A. 3004 Monument Avenue, Richmond, Virginia.

Q. Where are you employed?

A. Virginia Electric & Power Company in Richmond.

Q. And in what position?

A. Engineer in the distribution department.

Q. Mr. Bertolett, when did you first hear of any labor organization activity among the employees of the Virginia Electric & Power Company?

A. The the first part of May I heard a rumor of some activity in the transportation department.

Q. In Richmond?

A. In Richmond.

Q. Do you know anything definitely as to what form that activity took?

A. I knew nothing about it, except that rumor.

Q. When was the next that you heard of any organiza-
4669 tion activities among employees?

A. Just following the meeting of May 24th.

Q. Now, did you attend the meeting on May 24th in Richmond, which was addressed by Mr. Holtzclaw?

A. I did.

Q. How did you happen to attend?

A. I was elected as representative from a group called together on the third floor of the service building, which group consisted of the engineering department, installation department, and meter department.

Q. Who called that group together?

A. My immediate supervisor, Mr. Daffron, called us into the meeting.

Q. What was told to you when you were called together?

A. I believe it was Mr. Stribling addressed the meeting. Mr. Stribling explained that Mr. Holtzclaw was going to hold a meeting at the domestic science room at Seventh & Franklin Street that evening, for the purpose of explaining certain matters relative to the Wagner National Labor Relations Act.

Q. Was that the first you had heard of that meeting, when Mr. Stribling told you?

A. Yes; that was my first information about it.

Q. What else was told you at that meeting by Mr. Stribling or any other person representing the management of the company?

A. Well, he told us about that meeting and indicated that
4670 we would be interested in what took place at that meeting, and he designated a number of people sitting in the meeting, who turned out to be supervisors, foremen, and superintendents, and suggested that they all withdraw from the room

Q. Did they withdraw?

A. They all did.

Q. Did he withdraw, too?

A. And he did; yes.

Q. Do I understand you to say, then, that everyone in a supervisory capacity with the Virginia Electric & Power Company then left the room?

A. That is right.

Q. What happened after they left?

A. Well, two or three persons who were there stood up and made general remarks along the line that this would probably be an important event, and that if they all didn't go down to the meeting, at least some representative should be elected to attend that meeting and subsequently tell the rest about it.

4671 Q. Were representatives elected?

A. The election was held. I don't believe any one presided at the meeting, but two or three were nominated.

Q. Two or three people were nominated—Mr. Phillips, Mr. Crostic, Mr. Welch, Mr. Holtzbach, and myself. There were quite a number nominated.

Q. You were all delegated to go down to hear Mr. Holtzclaw's speech?

Trial Examiner FORT. They were nominated.

The WITNESS. We were nominated, and we withdrew from the room. At the subsequent election Mr. Holtzbach and I were elected to do the job.

By Mr. WHITE:

Q. Did you go to that meeting on the night of May 24th?

A. I went to that meeting.

Q. Mr. Bertolett, I hand you Board's Exhibit No. 4 and I will ask you if you can state whether this is the statement which was read by Mr. Holtzclaw at that meeting?

A. Yes; I believe that is it.

4672 Q. Did you hear Mr. Holtzclaw make any statement that night outside of that prepared statement which indicated that he or the company had any preference as to whether you joined any particular organization or joined none?

A. I heard no statement to indicate any partiality like that.

Q. What impression did you receive from what Mr. Holtzclaw said?

A. I guess my impression was that we were on the verge of
4673 substantial labor organizing of some description and that some organization of some kind would have to be carried out among the employees in connection with some attempts which he enumerated there to bargain with the company.

Q. Do you mean he indicated that there had been some requests made on the company in the line of collective bargaining?

A. He enumerated several instances, without being specific as to where they took place, of groups of varying size, but apparently all small, that came to various officials of the company and claimed that they represented certain groups and requested the right to represent those groups and bargain for them.

Q. Did he state what the attitude of the company was about such a form of collective bargaining?

A. The company took the attitude in those cases that these groups were not qualified to bargain in the manner that they stated.

Q. Did Mr. Holtzclaw say anything which indicated that he thought you ought to organize or that you had to organize or not?

A. He didn't say whether it was necessary to organize nor did he suggest that we should or should not organize.

Q. Nothing that he said gave you any impression of that kind?

4674 A. No.

Q. After he and Mr. Wood and Mr. Moore had finished speaking did they remain at the meeting?

A. After they finished speaking and answering questions those three left the room.

Q. After they had left what happened?

A. Forthwith about 50 percent of the people who were there got up and left and walked out.

Q. Where you one of those who left?

A. No, sir; I remained behind.

Q. What did those do who remained behind?

A. Well, a few of us who remained behind felt that there ought to be some discussion among ourselves as to the matters that had been brought up. We dashed out into the corridor and endeavored to bring back some of those who had left.

Q. Did you bring back any of them?

A. We brought back a few.

Q. After you brought them back what did the group do?

A. After we brought them back we endeavored to nominate a Chairman. We nominated Mr. Paige.

Q. What happened about Mr. Paige?

A. Mr. Paige declined.

4675 Q. Then who was nominated?

A. Then they nominated Mr. Walter Holtzbach.

Q. He was the man who was elected with you to attend that meeting, wasn't he?

A. That is right. And he was subsequently elected.

Q. Was there any action taken at that meeting after Mr. Holtzbach was made temporary chairman?

A. At that time there were about 15 of us in a circle.

Q. Had everybody else gone home?

A. Some of them had. Some of them were on the side lines but not taking any active parts. We decided that it was important for us to report back to our various groups what we had heard and at some subsequent time to get together again and see what the reaction had been upon the people we were representing.

Q. Did you set a date for that next meeting?

A. We set the date. Mr. Holtzbach set a date of June 1st. He endeavored to set it as May 31st but that proved to be a holiday. I mean May 30th.

Q. You say you decided to take the information which you had received from Mr. Holtzclaw back to your respective groups?

A. Yes.

Q. Did you and Mr. Holtzbach take your information back to your group?

4676 A. We took that information back.

Q. How did you report to your group?

A. The afternoon of the next day Mr. Holtzbach posted a notice, that notice calling both our group and another group in the line department in to meetings to be held in the same auditorium in the service building, one meeting called at eight o'clock and one at eight-thirty or a quarter to nine, when we were to report back.

Q. Did Mr. Holtzbach get permission from the superintendent to have that meeting?

A. He obtained permission from Mr. Walke.

Q. Do you know what argument Mr. Holtzbach had to advance in order to get the use of the building for that meeting?

A. The argument he used was that he was primarily elected as a delegate to find out something and he was coming back to report and he felt it his responsibility to render a report under the circumstances.

Q. Under those circumstances Mr. Walke let you have the building to hold that meeting in?

A. Yes.

Q. Was the meeting held in the day time or at night?

A. One meeting was held about eight o'clock in the morning and the other one was held at about a quarter to nine.

Q. The same morning?

A. Yes.

Q. Did you attend both of those meetings?

4677 A. Yes.

Q. The meeting at eight o'clock was for the line department, wasn't it?

A. Yes.

Q. And the meeting at eight-thirty?

A. It was a quarter to nine.

Q. At a quarter to nine the meeting was for the engineering installation group?

A. That is right.

Q. Was there any action taken at that meeting?

A. After that report there was some discussion that went on, and finally there was a suggestion that they express themselves as to what their attitude would be toward forming some kind of a labor organization.

Q. Was such a vote taken?

A. Yes; a vote was taken. A standing vote was taken on it.

Q. How was the vote submitted to the men?

A. In a variety of ways or on a variety of questions. One was whether they wanted any union at all.

4678 Q. How did they vote on that?

A. I believe one or two voted in favor of no union of any description.

Q. Did all of the rest of them vote in favor of having a union?

A. Of some kind.

Q. When was the next vote?

A. The next vote was relative to the C. I. O. and I believe they called for those interested in a group affiliated with the Federation.

Q. You mean the American Federation of Labor?

A. Yes.

Q. Did they have some votes for all of those?

A. As I recall it, there were no votes for either the American Federation of Labor or the C. I. O. in that line department meeting.

4679 Q. What else was submitted to the meeting?

A. When they called for an expression of sentiment for an independent union all but the first couple stood up and emphatically voted for it.

Q. Mr. Bertolett, was anybody told at that meeting that the company had any preference for any particular form of organization?

A. Not according to my recollection. There wasn't anything said along that line.

Q. And you were present at that meeting?

A. I was.

Q. At the second meeting you attended, which was the meeting of your own department, was the same form of vote submitted to that meeting?

A. The same procedure was followed.

Q. What was the outcome there?

A. There were also several votes for no union at all. There was one vote for the A. F. of L., or that group, and then the balance voted for an independent union.

Q. Mr. Bertolett, did they submit the C. I. O. to that meeting, too?

A. That was likewise submitted.

Q. Was the group that voted for an independent organization substantially the majority? Was it a substantial majority?

4680 A. A very substantial majority. There were only two or three who voted in any other way.

Q. Was there anything said at that meeting to the effect that the company had any preference as to whether or not you had any organization or what form of organization you should have?

A. Not to my recollection.

Q. You were present throughout the meeting, were you not, Mr. Bertolett?

A. I was.

Q. Did you attend the meeting on June first which had

4681 been set the night of May 24th?

A. I did.

Q. Where was that meeting held?

A. That meeting was held in the service building up in Richmond.

Q. Do you know who sent out the notices of that meeting?

A. I received no notice, but I believe there were some sent out by Mr. Holtzbach.

Q. Is this a copy of that notice of the meeting that was sent out by Mr. Holtzbach [indicating]?

A. Yes, sir; that is a copy of it. * * *

4682 * * * Mr. Examiner, I would like to ask to have this notice filed and received in evidence, or the photostatic copy of it, as Intervener's exhibit No. 32.

Trial Examiner FORT. There being no objection, it is received.

(The document above referred to was received in evidence and marked "intervener's exhibit No. 32.")

By Mr. WHITE:

Q. Mr. Bertolett, I hand you the minutes of a meeting of the steering committee for the VEPCO Workers Council, including a preface in front of those minutes consisting of four pages, and I will ask you if you prepared those minutes yourself.

A. I did.

Q. You did prepare that?

A. Yes.

Mr. WHITE. Mr. Examiner I ask that this be received in evidence as Intervener's exhibit No. 33.

Trial Examiner FORT. There being no objection, it will be received.

(The document above referred to was received in evidence and marked "intervener's exhibit No. 33.")

4689 By Mr. WHITE:

Q. Now, there was a statement made in these minutes that Norfolk was holding a mass meeting that same night. Do you know how that information came to your meeting?

A. Well, it might conceivably have come by the newspapers. There was discussion in the newspaper at that time. I do not recall just how it came out.

Q. You do not know how it came out?

A. No.

4690 Q. But it was known at that time that Norfolk was supposed to be holding a meeting, is that right?

A. That is right.

Q. There was a committee appointed at that meeting, was there not, Mr. Bertolett, for the purpose of getting in touch with the Norfolk group, is that right?

A. If there was any such thing as a Norfolk group, we did not know.

Q. And who was to be that committee?

A. Mr. Underwood, the chairman, and the secretary, and they elected one person from the group as a whole, who ultimately was Mr. Clarke.

4691 Q. I hand you a paper entitled, "Joint meeting of Norfolk and Richmond committees for forming 'Workers' Alliance,' called for 8:30 p. m. on June 2nd, 1937." While that is entitled "Joint meeting," did anybody from Norfolk turn up?

A. Nobody from Norfolk turned up.

Q. What happened when you got to Petersburg?

A. We arrived there and found no one from Norfolk, and I believe there was a telephone call that they could not come, on account of some reason or other. They did not have everybody together.

Q. When did you prepare those minutes?

A. The next two or three days.

Mr. WHITE. Mr. Examiner, I ask to have these minutes received in evidence as intervener's exhibit No. 34.

Trial Examiner FORT. There being no objection, they will be received.

(The document above referred to was marked "intervener's exhibit No. 34" and received in evidence.)

By Mr. WHITE:

Q. Mr. Bertolett, I now hand you Board's exhibit No. 19 and ask you if you prepared those minutes.

4692 A. Yes; I prepared those minutes.

Q. Do they correctly record what took place at that meeting, according to your recollection?

A. They do.

Q. I hand you a paper entitled "Minutes of meeting of June 9, 1937," and ask you if you prepared those minutes.

A. Yes; I prepared those minutes.

Mr. WHITE. Mr. Examiner, I ask that these minutes be received in evidence as intervener's exhibit 35.

Trial Examiner FORT. There being no objection, they

4693 will be received.

(The document above referred to was marked "intervener's exhibit No. 35" and received in evidence.)

By Mr. WHITE:

Q. Mr. Bertolett, do these minutes correctly record what took place at that meeting?

A. To the best of my recollection they do.

Q. That meeting was practically altogether taken up with discussion of the new constitution which had been prepared; is that right?

A. That is right.

Q. Do you recall what the next meeting was of your group?

A. The next meeting of our group was the meeting held on the 15th of June, I believe, at the American Legion Hall.

Q. Between the meeting of June the 9th and the meeting of June the 15th had you been in conference with your attorney with reference to the suggested changes to the constitution as set out in your minutes of June the 9th?

A. Yes. A committee consisting of Arthur Clark, Mason Wash, I believe George Roberson, and myself, went over and called on

Mr. Temple, acting in Mr. White's absence, and we went over these proposed changes to the constitution.

Q. You made a great many changes in it, did you not?

A. We made very substantial changes in it. In fact, Mr. White had submitted what in essence was a plan of organization, or something of that sort, and we explained that we pre-
4694 ferred a constitution and bylaws, and we also incorporated the changes that were approved in that meeting of the 9th.

Q. Then I believe you stated that the next meeting was the meeting of June the 15th at the American Legion Hall; is that right?

A. That is right.

Q. Mr. Bertolett, I hand you intervener's exhibit 22 and I ask you if you prepared the minutes of this meeting, which is said to be in the American Legion Hall on June 15th.

A. I prepared them.

Q. I notice the name of Juanita B. Seay, signed at the bottom. Please state if you remember, whether Miss Seay was at the meeting.

A. Miss Seay was at the meeting and kept the minutes.

Q. In fact, she kept a stenographic record of what took place at the meeting; is that it?

A. That is right.

Q. At the American Legion Hall?

A. Yes.

Q. And these minutes were prepared——

A. From the stenographic report of the proceedings.

Q. From the stenographic report of the proceedings. Do those minutes correctly record what took place at the meeting?

A. To the best of my recollection, they do.

4695 Q. At that meeting there were certain representatives from Norfolk, is that right?

A. Two or three, three or four, something of that sort. At least, I recall Mr. Tatem came there among them and Mr. Wallace, I believe.

Q. Now, at that meeting the constitution and bylaws were read article by article and passed upon; is that true?

A. That is true.

4696 Q. And certain changes were made at that meeting to the constitution?

A. That is right.

Q. Do you know what was next done in respect to the constitution?

A. Well, Mr. White, you were there at that meeting, and you took the revised constitution back to Petersburg, and prepared

the mimeographed stencils, from which we had prepared 200 copies.

Q. When was that done?

A. It was done on the 16th.

Q. On the 16th day of June?

A. That is right.

Q. There was also presented at that meeting a form of membership card; is not that right?

A. Well, in your constitution, you had set forth a form. There was nothing else that I know of.

Q. Did you take any action in respect to the membership card?

A. Also on the 16th, I went down, in company with Mr. C. L. Point, to look for a printer who would prepare some membership cards for us. We called on several people.

Q. Did you get bids?

A. Ultimately we called on the Virginia Stationery Company and obtained bids from them. The other people we called
4697 on were not qualified to print cards.

Q. Mr. Bertolett, I hand you a paper, dated June 16, 1937, on the stationery of the Virginia Stationery Company, and ask you if that is the bid that you received from them for printing these cards?

A. This statement includes the bids for the cards, including bids for the constitution and bylaws, forms, and a number of other things.

Q. Were the memoranda on that paper made by the Virginia Stationery Company or by you?

A. They were made by me. In the course of our discussion we discussed these other matters, as shown in print, first, and the man at the stationery company—Mr. Mosby, to be exact; that is his name—asked his stenographer to prepare a typewritten bid, and at our request, after we had brought them in, we discussed these various other matters.

Q. As a result of this bid, did you place the order with the Virginia Stationery Company?

A. We placed the order with them for 3,000 cards to be delivered as soon as possible.

Mr. WHITE. Mr. Examiner, I ask to have this bid received in evidence as Intervener's Exhibit No. 36.

Trial Examiner FORT. It will be admitted.

(The card referred to was marked "Intervener's Exhibit No. 36" and was received in evidence.)

4699 By Mr. WHITE:

Q. Mr. Bertolett, I hand you a bill from the Virginia Stationery Company to the Independent Organization of Em-

ployees at the Virginia Electric & Power Company, dated June 28, 1937, and ask you if you have ever seen that bill before, and to state what it is.

A. This is a bill from the Virginia Stationery Company to us, covering a total of 3,500 cards, which they printed for us. There is an item here on the 21st of 3,000, which covered our original order, and subsequently, on the 24th, 500 additional cards, which they printed later.

Mr. WHITE. Mr. Examiner, I ask that this be received in evidence as intervener's exhibit No. 37.

Trial Examiner FORT. It will be received.

(The document above referred to was marked "Intervener's Exhibit No. 37" and received in evidence.)

By Mr. WHITE:

Q. Mr. Bertolett, that bill shows that the order was placed as of the date of June 21, 1937. Do you recall whether that is correct?

A. The circumstances surrounding that deal are these: I placed the order on the 16th and received proofs on the 17th, and received a portion of the order on the 18th, upon great insistence for some kind of speed. The balance of them were delivered on the 21st, at which time I asked for 500 more, and they were delivered, apparently on the 24th, and he dated his bill as of the date of the delivery of the goods.

4700 Q. So that you did get part of the cards on June 18th?

A. To the best of my recollection, I did.

Q. Were any of those cards sent to Norfolk?

A. Yes; there were a considerable number of them.

Q. Who carried them down there?

A. Mr. Point.

Q. By automobile?

A. By automobile.

Q. I notice that this bill is marked paid on July 29, 1937. Do you remember whether that is the date it was paid?

A. I can verify that through some records I have; yes, sir.

Q. Was it paid out of funds of the I. O. E.?

A. It was paid out of the 25-cent contributions.

Q. Mr. Bertolett, I hand you the minutes of the meeting dated June 23, 1937, and ask you if you prepared those minutes.

A. I prepared those minutes.

Q. Do they absolutely correctly report what took place at that meeting?

A. To the best of my recollection.

Q. At that meeting I believe you decided to rent some quarters for yourselves; is that true?

A. Yes.

Q. You selected 401 East Franklin Street, Richmond?

A. That is right.

Q. Is that still the quarters occupied by the I. O. E.?

4701 A. That is true.

Mr. WHITE. Mr. Examiner, I ask that these minutes be received in evidence as intervener's exhibit No. 38.

Trial Examiner FORT. They will be admitted.

(The document above referred to was marked "Intervener's Exhibit No. 38" and received in evidence.)

4703 By Mr. WHITE:

Q. When you got the ballots and the envelopes and so forth, how did you distribute them?

A. I believe there was a meeting held, and we gave the ballots and envelopes, a very substantial number of them, to the various members of the steering committee for their respective departments.

Q. I hand you the minutes of the meeting of June 29, 1937, and ask you if you prepared those minutes.

The WITNESS. I prepared those minutes.

By Mr. WHITE:

Q. Do they record correctly what took place at that meeting?

A. To the best of my recollection.

Mr. WHITE. I ask that they be received in evidence as Intervener's Exhibit No. 39, Mr. Examiner.

Trial Examiner FORT. They will be received.

(The document referred to was marked "Intervener's Exhibit No. 39" and was received in evidence.)

4704 By Mr. WHITE:

Q. Mr. Bertolett, I hand you the minutes of the meeting of the steering committee of the I. O. E., which was held at 10 o'clock in the morning on July 6, 1937, and ask you if you prepared those minutes?

The WITNESS. Ten o'clock in the evening.

By Mr. WHITE:

Q. Ten o'clock in the evening?

A. Yes, sir.

Q. Did you prepare those minutes?

A. I did.

Q. Do they correctly record what took place at that meeting?

A. To the best of my recollection.

Mr. WHITE. Mr. Examiner, I ask that these be received in evidence as Intervener's Exhibit No. 40.

Trial Examiner FORT. They will be received.

(The document referred to was marked "Intervener's Exhibit No. 40" and was received in evidence.)

By Mr. WHITE:

Q. I now hand you the minutes of the meeting held on July 6th, at 8 o'clock p. m., and ask you if you prepared those minutes?

A. I prepared them.

Q. Do they correctly record what took place at that
4705 meeting?

A. To the best of my recollection.

Mr. WHITE. Mr. Examiner, I ask that these be received in evidence as Intervener's Exhibit No. 41.

Trial Examiner FORT. It may be received.

(The document referred to was marked "Intervener's Exhibit No. 41" and was received in evidence.)

By Mr. WHITE:

Q. I now hand you the minutes of the meeting of July 16, 1937, and ask you if you prepared those minutes?

A. I prepared those minutes.

Q. Do they correctly record what took place?

A. To the best of my recollection.

Mr. WHITE. Mr. Examiner, I ask that this be received in evidence as Intervener's Exhibit No. 42.

Trial Examiner FORT. It will be received.

(The document referred to was marked "Intervener's Exhibit No. 42" and was received in evidence.)

4708 Mr. WHITE. It is stipulated that this witness will testify in substantial conformity with the testimony of W. W. Faust as to the proceedings at the meeting at the Nansemond Hotel, Ocean View, on July 17th and July 18th, 1937.

Mr. SPENCER. That is correct.

By Mr. WHITE:

Q. Mr. Bertolett, you participated in the negotiation of the contract with the management on July 30 and 31 and August 1, 1937, did you not?

A. That is right.

Mr. WHITE. Now, with the exception of the question of recognition, it is stipulated that the testimony of this witness relative to the negotiation of the contract between the I. O. E. and the Virginia Electric & Power Company will be the same as that of the witness W. W. Faust.

Mr. SPENCER. That is correct.

By Mr. WHITE:

Q. Mr. Bertolett, at the time that the contract between the I. O. E. and the Virginia Electric & Power Company was nego-

tiated, what proof was required from the company relative to the membership of the I. O. E.?

A. Mr. Underwood was requested to furnish an affidavit, in which he specified the number of employees who were mem-
4709 bers of our organization in all the various departments in the Virginia Electric & Power Company, and he further stated—I don't recall just who stated the fact——

A. We further stated that we had in our possession with us as we entered the board room of the Virginia Electric & Power Company something like 2400 or 2500 signed membership cars, which we would be glad to present as further evidence of our membership and strength.

Q. The cards were actually there at the meeting, were they not?

A. They were there.

Q. And before that time had you prepared the memorandum which Mr. Underwood submitted to Mr. Holtzclaw?

A. I did with assistants count the cards and prepare the
4710 memorandum.

Q. Were you the person that actually did the counting and furnished the data for the statement which accompanied Mr. Underwood's letter to Mr. Holtzclaw, under date of July 26, 1937?

A. That is correct.

Q. Now, Mr. Bertolett, there has been introduced in evidence a letter from you to P. R. Williams, comptroller, Board's exhibit No. ——.

Trial Examiner FORT. I think it is No. 47.

Mr. SPENCER. It is respondent's exhibit.

Mr. WHITE. Here it is, Board's exhibit No. 39.

By Mr. WHITE:

Q. Did you write that letter to Mr. Williams?

A. I think so.

4711 Q. What was your reason for writing that letter?

A. We were about to obtain membership cards for the purpose of obtaining signed memberships in our organization. We didn't under any circumstance want to sign foremen and supervisors with the company, so we asked for that information so that we would not run the risk of having someone in our meetings and in our organization who was in a supervisory capacity. That was before we had any membership cards printed.

Q. There has been introduced in evidence as Board's Exhibit No. 40-A and 40-B a letter from P. R. Williams to you, dated June 15, 1937, to which letter is attached a statement. Did you receive that letter and statement?

A. I did.

Q. Subsequently did you receive from Mr. Williams a list of the employees of the Virginia Electric and Power Company?

A. I did.

4724 Cross-examination by Mr. MOORE:

Q. Now, you have testified as to your interest in the formation of this Independent Organization of Employees of the Virginia Electric & Power Company and appear to have been active in it from the beginning. I now ask you, in the light of that fact, whether or not, to the best of your knowledge and belief, the Independent Organization of Employees of the Virginia Electric & Power Company from its beginning at all times has functioned with funds collected from its own members. Has it ever, so far as you know and believe, received any financial aid or other support from the company in any way?

A. No, sir. In fact, we were in very desperate circumstances many times because we had to rely on ourselves and persuade ourselves to give dimes and quarters to finance our campaigns. There was no financial aid of any sort except from the people who are now members.

Q. Did you have rather strong convictions yourself on the subject as to whether or not you cared to go into one of the national labor unions?

A. I had rather strong feelings about that matter.

Q. Were you favorable or unfavorable?

A. I was very firmly unfavorable toward affiliating with a national organization.

Q. You did not believe it was in your best interest?

A. I did not.

Q. Was your activity motivated by any other feeling ex-
4725 cept that you did not believe it was for your best interest or for that of your fellow employees to do otherwise than what you did? Was that your sole motive?

A. That was my sole motive.

Q. So far as you know and believe, was there ever any aid given to your organization otherwise than in a financial way by the company, or was your organization kept entirely without any support of any kind from the company, to the best of your knowledge and belief?

A. To the best of my knowledge, there was no advice given; there was no financial aid given; and no friendship, nor, for that matter, no hostility; but there was no cooperation from any person in an official capacity with the power company to this organization, so far as I know.

4732 Cross-examination by Mr. SPENCER:

Q. Was the steering committee representing the employees of the Richmond division?

A. Our individual departments, like my own, had elected these people. Sometimes ten people got together in a department and elected a man; sometimes two or three hundred got together and elected a man. There was no uniformity for basis of repre-
4733 sentation. A lot of departments were not represented at all. But I was elected by my department to represent them.

4734 Q. And what authority was given you, other than to attend the meeting on the 24th, and to also report back to the men what took place on the 24th?

A. In the meeting at which I reported back, they voted to sponsor or form an independent organization, and I was designated to take such steps as were necessary to form an independent organization. That would include that group that I represented. Nobody knew how extensive it might be at that time, or how limited, and I was supposed to do all I could and report back to my constituents from time to time as to the progress.

Q. Were any minutes made of that meeting?

A. No.

Q. You have nothing in writing showing your authority?

A. No; I am afraid I have not.

Q. At the meeting on June 1st, did each representative present just get up and state he represented so many men in his department?

A. Some of them presented petitions, which showed their endorsement by certain groups of people, and others stated that they had been elected in due course, and we accepted them at their face value, and nobody felt at that time that it mattered very much, anyway.

Q. At this meeting on June 1st you decided to call a system-wide meeting of the representatives in Petersburg on June 2nd; is not that correct?

4735 A. I don't believe the date was specified in those minutes, nor was it decided that night. It was necessary to make some contact at Norfolk, which had not been made at that time.

Q. When was it decided that you would have the meeting of the Norfolk and Richmond divisions in Petersburg on the 2nd?

A. It was probably decided on the 2nd, as far as I know. I don't know when it was decided. I was a member of the committee, and Mr. Underwood got hold of me and said, "We are going over to Petersburg," and away we went.

Q. So you had nothing to do with deciding as to this meeting on June 2nd?

A. Nothing at all.

Q. When you got to Petersburg, you found nobody there from the Norfolk division?

A. That is right.

Q. And you people sat down and had a little chat and came back; is that correct?

A. That is right.

Q. Where did you meet on June 2nd?

A. We went to the Virginia Electric & Power Company office building.

4736 Q. So at that meeting that night, did you then arrange for the meeting on June 3rd?

A. Yes, sir.

Q. On June 3rd the meeting was actually held between the members of the steering committee of the Norfolk and Richmond divisions?

A. There were only three of us from Richmond. It was not the whole steering committee. I don't know what they call themselves in Norfolk, but there was quite a number of them there.

Q. I notice in the minutes of the meeting which you identified, at the bottom, or almost the bottom of page 2, there is a "Mr." and then a blank, "though not a member of the committee endorses the idea of a single lawyer." Who is that man that you have no name for?

A. I don't know why that should be omitted, but that was Mr. Shepherd. He attended the meeting. He was our host and made the arrangments.

Q. You knew Mr. Shepherd, of course?

A. Yes; I had met him.

Q. Then, at the top of page 3, "Qualifications of Mr. Bohannon and Mr. White were received by"——

A. "Reviewed."

Q. (Continuing.) "Reviewed" by Mr. "blank" again?

A. Mr. Shepherd.

4737 Q. Is there any reason why Mr. Shepherd's name should have been in blank there?

A. I don't know of any reason.

By Trial Examiner FORT:

Q. Who is Mr. Shepherd?

A. He is a salesman in Petersburg—a commission salesman.

By Mr. SPENCER:

Q. Now, was there any discussion among the members of the committee or joint committees as they met there that night before

it was decided to get a lawyer and how this lawyer was going to be paid?

A. Well, there was quite a discussion about getting that lawyer. In fact, that was the principal point of discussion.

Q. Well, at that time, you had no organization; had you?

A. No; that is correct.

Q. And you had collected no dues?

A. No; not a cent.

Q. How did you expect to pay the attorney?

A. We expected to have an organization and to obtain credit until we could pay him for it. That was all. Whichever lawyer took that job was taking a risk on his fee.

4738 Q. And did the group there, the steering committee, personally stand obligated to pay the bill, the lawyer's bill, in case no organization was perfected?

A. I suppose, from the legal ground, the steering committee in Richmond, plus that group in Norfolk, could have been held liable. We so regarded ourselves, at any rate.

Q. Who went to see Mr. White to ask him to act as the attorney for the I. O. E.?

A. Mr. Underwood and Mr. Clark.

4743 Q. Now, on May 25th, Mr. Holtzbach posted a notice that there would be a meeting on May 26th; is that correct?

A. Yes.

Q. Where did he post that notice?

A. On the company bulletin board.

Q. What time of the day on May 25th did he post that bulletin?

A. Some time during the afternoon. I don't believe I know exactly when.

4750 Q. Mr. Bertolett, I show you Intervener's Exhibit No. 37, which is a bill to the Independent Organization of Employees from the Virginia Stationery Company. Under the date it has the figure "21." I will ask you what that date represents?

A. That was the date on which I received the last of the 3,000 ordered the first time.

Q. Mr. Wash not being present here at this hearing, I was in Mr. Wash's office and asked him what that meant, and he said he didn't know; so in the presence of Mr. Wash I called the Virginia Stationery Company, and they said that was the first time that an account had been opened with them by the Independent Organization of Employees on June 21, 1937.

Q. How many cards did you get from the Virginia Stationery Company prior to June 21, 1937?

A. It seems to me we got about half of them, about 1,500.

Q. When did you get those cards?

4751 A. The morning of the 18th.

Q. On the morning of the 18th?

A. Yes.

Q. Who got the application for membership cards from the Virginia Stationery Company?

A. I myself.

Q. What time in the morning did you get those cards?

A. About nine-thirty.

Q. What did you do with the cards when you got them?

A. I gave a considerable number of them to Mr. Point to bring down to Norfolk.

Q. What is Mr. Point's full name?

A. Clarence L. Point.

Q. You gave a considerable number of them to Mr. Clarence L. Point to bring to Norfolk?

A. That is right.

Q. How many would you say you gave to Mr. Point to bring to Norfolk?

A. I think about a thousand, being a majority of the number.

Q. Had you contacted anybody in Norfolk with respect to Mr. Point's bringing the cards down here?

A. I had not, but I believe Mr. Underwood had. He had made arrangements for someone to do it.

Q. Do you know who Mr. Underwood called up?

A. I do not.

4762 Q. Did you think there was anything inconsistent in the company furnishing the employee organization with such a list when the contract specifically stated that the employee organization should furnish the company with it?

A. Well, it seems to me that it would be necessary for us, in the early stages of this organization, to have such a list in our procurement of membership—a complete membership, particularly in view of the fact that we had a closed-shop arrangement, and it was necessary for us to sign up every person who was eligible so that they would not be subject to embarrassment that might result by being omitted.

Q. Would not the same thing have worked had you furnished the company with a list of your members?

4763 A. It probably——

Q. Would the same end have been accomplished and that would have been according to the terms of the contract?

A. With the exception there would have been very much difficulty from our end of the argument to have produced that kind of records; and we paid the company a consideration for obtain-

ing that information. That was a matter of records and bookkeeping that was largely worked out by our treasurer, who wanted to have records that would pass muster with the power company.

4775 Q. Well, the members of the steering committee were virtually the same group of people who had attended the Throckmorton talk in Norfolk and the Holtzclaw talk in Richmond, were they not?

A. Generally speaking. There were some exceptions.

4808 By Trial Examiner FORT:

Q. When would you say you reached a majority of employees that you could count among the eligible employees?

A. Well, around the 1st of July.

Q. Was it before that?

A. Well, that would be a conservative estimate. We did have a majority by the first of July, I am confident.

Q. Well, when were you recognized as a bargaining agent for the men?

A. I suppose when we entered the board room at 7th and Franklin Streets and started to bargain we were recognized that instant.

4810 Redirect examination by Mr. WHITE:

Q. Has the company even given the I. O. E. a list of any kind that the I. O. E. had not been required to pay for it?

A. Not one cent.

Q. Did the I. O. E. pay for the deduction of dues by the company?

A. They do.

Q. Has the company, to your knowledge, in any way ever
4811 paid any bills of the I. O. E.?

A. Not one cent.

Q. Are there records kept of all financial transactions of the I. O. E.?

A. They were kept right back to the beginning.

Q. Were they set up by a person who knew how to set up a bookkeeping method?

A. In the beginning they were not. I set them up. But so soon as we had a duly elected treasurer, from that point forward we had a good set of books.

Q. And the records are kept, bills are paid, and checks are issued?

A. Yes, sir.

Q. And that is available for anybody who wants to see it?

A. Absolutely.

Q. As a matter of fact, hadn't the I. O. E. made available to Mr. Spencer its financial records if he wanted to look through them?

A. In fact, he has, I understand.
Q. He has gone through those records, hasn't he?
A. I think so.

4816 COLLOQUY

Mr. SPENCER. This is a photostatic copy of part of the list furnished the I. O. E. by the Virginia Electric & Power Company, and under the list of employees ineligible to become members there is the name of Mr. E. T. Diggs. I wish to offer this as Board's Exhibit No. 50.

Trial Examiner FORT. In the absence of objection, it will be received.

(The document referred to was marked "Board's Exhibit No. 50" and was received in evidence.)

4817 Recross-examination by Mr. MOORE:

Q. To the best of your knowledge and belief, is there any person in even a questionable or doubtful position as to being in a supervisory capacity or not, now in the organization, or have all the cases that could have even been treated as reasonably doubtful been eliminated?

A. They have.

Q. Now, as I understood it, of this number that we are sort of falling into using for discussion, without a great deal of actual knowledge on your part, of 50, you mean they are persons who were most active in the organization from June 15th, when your constitution was adopted, and you yourself had eliminated, say, roughly, at least half of those?

A. Yes.

Q. Before August 1st?

A. I so stated a while ago.

Q. Your contract was signed on August 5th, and these two restrictions were written into the contract; namely, that no persons in confidential positions could be bargained with as a member of your organization, and no person who was of a similar grade as a foreman could be bargained with. Are there not a small group which you have estimated as, say, 25, who were, so far as you knew and believed, really not in supervisory positions?

A. That is true. In fact, this Miss Sheppe that I quoted before I would regard as being perfectly eligible as a member,
4818 and she took a very active part, but I did ask her to do that typing that I mentioned.

Q. In other words, on July 1st, say, a month before your contract was signed, had your organization eliminated all cases then which you believed to be reasonably doubtful, even?

A. That is right.

Q Now, of the group that were eliminated, either by yourselves without any discussion with the company or management, or a little later in discussion with the company or management, were any of those people whom you might call moving spirits in the organization?

A. No.

4820 By Mr. SPENCER:

Q. Mr. Bertolett, I show you a photostatic copy of a letter, and ask you if you can identify that [handing the document to the witness]?

A. (After examination of the document.) I recognize that letter.

Mr. SPENCER. Mr. Examiner, at this time I would like to offer this as Board's Exhibit No. 51.

Trial Examiner FORT. In the absence of objection, it will be admitted.

(The document referred to was marked "Board's Exhibit No. 51" and was received in evidence.)

4838 EUGENE T. UNDERWOOD, a witness called by and on behalf of the Intervener, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. WHITE:

Q. Please state your name.

A. Eugene T. Underwood.

Q. Where do you live, Mr. Underwood?

A. In Richmond, R. F. D. 9.

Q. And by whom are you employed?

A. Virginia Electric & Power Company.

4839 Q. In Richmond?

A. Yes, sir.

Q. And what is your status with the company?

A. I am in Mr. Miles Cary's office as assistant engineer.

Q. On what floor of the general office building in Richmond is your office?

A. I am in 502, on the fifth floor—503.

Q. Now, who occupies office 503 other than yourself?

A. Mr. Miles Cary, and at the present time Mr. Robert Chisholm.

Q. And yourself?

A. Yes, sir.

Q. Do you have any person working under you?

4840 A. No, sir.

Q. And to whom do you report?

A. Mr. Miles Cary.

Q. Are any of your duties in any way supervisory in their nature?

A. No, sir.

4842 Q. Mr. Underwood, when was the first that you heard of
4843 any labor organization activities among the employees of the Virginia Electric & Power Company?

A. About May the 28th, approximately.

Q. May 28, 1937?

A. 1937; yes, sir.

Q. You did not attend Mr. Holtzclaw's meeting down at the auditorium, did you?

A. No, sir.

Q. Did you know anything about it?

A. No, sir.

Q. Now, on May the 28th, what did you hear?

A. Well, on that morning Mr. Cary came in and said we are going to attend a meeting. I went out in the hall, and when I went out in the hall—Mr. Heintzman was the clerk—and we walked down the hall and went into one of the larger drafting rooms, which is about the size of two offices.

4844 Q. What took place at that meeting?

A. Mr. Stribling said—I think his opening statement was that some of these boys had not been notified about the meeting, and he would like to make a statement on what Mr. Holtzclaw read at the meeting.

Q. In other words, nobody on the fifth floor had been notified to attend Mr. Holtzclaw's meeting?

A. That is right.

Q. This was an attempt to notify those men who had been overlooked?

A. Yes, sir.

Q. Now, Mr. Underwood, state what Mr. Stribling did.

A. Mr. Stribling read Mr. Holtzclaw's statement.

Q. That is the statement which has been introduced in evidence as Board exhibit No. 4; is that right?

A. Yes, sir.

Q. Did he make any remarks other than merely reading the statement?

A. No, sir. When he got through he asked Mr. Tutweiler and Mr. Cary to come with him, and they left the room.

Q. Were any supervisory personnel left in the room at that time?

A. No, sir.

Q. After they left what happened?

A. Well, I don't think anyone just exactly knew what
4845 it was all about. And then they began to ask questions.

One or two got up and said they understood some of the other departments had been holding meetings, and if I remember

correctly, somebody said that it looks like some kind of organization or unit or something was being formed. The attitude I got was that they felt as though if the line department or the transportation department or other department was going to get something they want to get something; they don't want to be left in the dark.

Q. In other words, they wanted to be in on what was happening?

A. Yes, sir.

Q. What action was taken?

A. Somebody suggested that they appoint someone to go to any kind of meeting and see what was going on.

Q. Who was elected?

A. I was.

Q. How were you elected?

A. By a show of hands.

Q. You were elected, as I understand, then, to find out what was going on, and, if there was any organization activity, to get into it; is that right?

A. Yes, sir.

Q. This was on May 28, 1937?

A. Yes, sir.

4846 Q. After you were elected did anything else take place at that meeting?

A. No, sir. We all just went out of the room. I went back to my office.

Q. After that did you make any efforts to find out what was going on?

A. Yes, sir.

Q. What did you do?

A. Well, in the first place, I called the system operating office and called, I think, Mr. D. D. Harrison.

Q. Where is he located?

A. He is a system operator. I asked him if anything was going on at 12th Street. He told me had attended Mr. Holtzclaw's speech and that he went there representing the system operators, and he said he understood Mr. Holzback had been nominated chairman. He did not know chairman of what, but he said he was nominated for chairman.

Q. At the meeting of May the 24th?

A. Yes, sir. And he named Mr. Roberson. I called Mr. Roberson—he was in a sub-station—and I talked to him; and I called at the service building.

Q. Had you known Mr. Holzback before that time?

A. Yes, sir.

Q. And what did Mr. Holzback tell you?

4847 A. Well, I couldn't get so much from what he said. He said he had been elected chairman of the meeting up there, and I didn't get so much out of Mr. Holzback as to what else he was supposed to do. In other words, my opinion was at that time he did not know what it was all about, to tell you frankly.

Q. Did you call anyone besides Mr. Holzback and Mr. Harrison and Mr. Roberson at that time?

A. Yes, sir; I called Norfolk.

Q. Whom did you call in Norfolk?

A. Mr. Jones.

Q. Mr. N. R. Jones?

A. Yes, sir.

Q. Did you find out anything from Mr. Jones?

A. I asked Mr. Jones what took place down there in the way of any organization efforts or labor efforts, and he said that they had appointed or elected groups of men around the plant and that they had attended meetings. He said he understood they were going to hold a meeting subsequently. I do not know whether he gave me the date or not, but they had planned to hold a meeting in Norfolk.

Q. Did Mr. Holzback tell you that there was going to be a meeting in Richmond?

A. Yes, sir.

Q. Did he tell you when it was going to be?

4848 A. I do not know whether he told me the exact date it was going to be. I told him, "Well, I certainly think I ought to have a notification, because I repre[illegible] my group, and if you are going to have any kind of a meet[illegible] think I should be notified."

Q. Did he agree to notify you?

A. Yes, sir.

Q. Were you notified?

A. Yes, sir.

Q. And when was that meeting held?

A. June the 1st.

Q. Now, prior to June the 1st, was there any other development in Richmond with respect to labor organization among the employees of the Virginia Electric & Power Company?

A. Prior to June 1st?

Q. Yes.

A. I really don't know.

4851 Q. You attended a meeting on June 1, 1937, at the service building, did you not?

A. Yes, sir.

Q. And I believe you were elected chairman of that meeting; is that right?

A. Yes, sir.

Q. Do you know any reason why you were elected chairman, rather than somebody else?

A. No; I don't, except probably before the meeting in the discussion, I imagine some of the things I said, as to the ideas I would have, in their discussion, what they seemed to think—the opinion I got from those men, talking; most of their men were for an independent organization, but I don't know whether it was my positive words or my personal appearance, or what it was that caused them to do it.

Q. Did you have any convictions at that time as to any form of organization for the Virginia Electric & Power Company employees?

A. Do you mean when I was elected chairman?

Q. When you first went to that meeting on June 1st.

4852 A. No, sir; no, sir.

Q. You had no definite idea along that line?

A. No, sir.

Q. Had your group ever voted on what they were going to do?

A. No, sir; hadn't voted, but some time before I went to the meeting we were talking about it. I talked to some of the men, and some of them—of course, I was talking to them and they would call me, and I called them, and they seemed to know that their men had voted for some type of independent, and I talked to several of my own men, and some of them had come to me in a group and said that they were in favor of the Independent. Now, I won't say that I talked to everyone in that group. I didn't hold a formal vote as to whether they wanted an independent or not—not a meeting, a formal vote.

4853 Q. The minutes state that the chairman said that Norfolk is holding a mass meeting that same night, and efforts will be made to contact Norfolk's chairman regarding their action today. How did you know that Norfolk was holding a mass meeting?

A. I didn't know it was a mass meeting. I knew that they were having a meeting. Mr. Jones told me they planned to hold a meeting.

4854 Q. There was some discussion also, was there not, as to how there would be joint action with Norfolk attempted, or whether Richmond would come by itself; is not that true?

A. Yes, sir; they definitely stated that we would try to arrange some place that would not be too far for us to go, or to

far for Norfolk to go at that time, to select a neutral point, at least, that we could meet, or that we could get in contact with Norfolk, to see just what they were doing.

4855 Q. Now, following the meeting of June 1st, I believe you got in touch with somebody in Norfolk, did you not?

A. Yes, sir; I called Mr. Jones in Norfolk.

Q. You called Mr. N. R. Jones?

A. Yes, sir.

Q. What did you inquire of him?

A. I asked Mr. Jones if they had a meeting, and he said

4856 he thought they had, and I asked him who had been appointed chairman of the Norfolk group, and he said he didn't know, and I asked him if he wouldn't find out, and he said yes; he would find out and call me back.

Q. Did he do that?

A. Yes, sir.

Q. Who did he tell you was chairman?

A. Mr. Nickerson.

Q. Did you then get in touch with Mr. Nickerson?

A. Yes, sir; I called Mr. Nickerson.

Q. And what was the result of your conversation with Mr. Nickerson?

A. Mr. Nickerson agreed to come up and meet us at Petersburg.

Q. When?

A. On June—on the next night, June 2nd.

Q. On June 2nd?

A. That same day. I called him the next morning, and asked if he would come that night and bring Mr. Elliott with him.

4857 Q. Mr. Bertolett testified that when you got to Petersburg, you had a message, I believe, that Norfolk was not going to be able to appear, and you went in and called up somebody; is that true?

A. Yes, sir.

Q. Whom did you call?

A. Mr. Shepherd met me at the door and said they couldn't come up, and so I went in to the company switchboard and asked the boy to get Norfolk for me—to get Norfolk and ask the Norfolk operator if he could locate Mr. Nickerson. I waited for a while, and he couldn't do it.

Q. As to this office switchboard, do you use the telephone lines of the Virginia Electric & Power Company between Norfolk and Richmond, and so forth, very frequently?

A. Yes, sir.

Q. Do you use that on business?

A. I use it for business and other matters, too.

Q. How long have you been doing that?

A. Well, ever since they have had the leased line. I think that is somewhere around 1930 or 1931, when they put on
4858 that leased line.

Q. Is it the general custom of the men who have to use that line occasionally on official business, to use it for personal business, if they feel like it?

A. Yes, sir.

Q. Do they have to ask anybody's permission to do it?

A. No, sir; I never did.

Q. As a matter of fact, it might be embarrassing to ask for that permission; it might be refused; is that right?

A. I don't know about that.

Q. Nobody has ever given you permission to use those lines for personal business for yourself?

A. No, sir.

4861 Mr. WHITE. Mr. Hilton, I would like to stipulate, to save time here, at this point, that this witness will testify the same as Mr. Bertolett, Mr. Morris, and Mr. Tatem, as to the proceedings of the June 3rd meeting in Petersburg.

Mr. HILTON. That is satisfactory.

By Mr. WHITE:

Q. At that meeting in Petersburg you and Mr. Bertolett and Mr. Clark, I believe, were appointed a committee to get in touch with a lawyer, Mr. Bohannon as first choice, and I believe I was second choice, and somebody else was third choice?

A. There were three or four. Mr. Bohannon was first, and you were second.

Q. Do you know what action was taken by that committee?

A. You mean whether or not we contacted a lawyer?

Q. Yes.

A. Yes, sir.

Q. Was Mr. Bohannon seen?

A. Yes, sir; Mr. Shepherd went downstairs and called Mr. Bohannon. I think he came back and said Mr. Bohannon wasn't in. We asked Mr. Shepherd, "Did you contact Mr. Bohannon and talk to him?"

Q. Did you get any report from Mr. Shepherd as to whether he had done it?

A. Yes, sir; he said he had, and Mr. Bohannon said he was so busy he couldn't do anything like that, and he contacted
4862 you, and had made an appointment with you.

Q. And did you come to see me?

A. Yes, sir.

4863 Q. What did you ask me to do?

A. I explained the whole set-up and why we were there. Mr. Shepherd took us over there and introduced us to you, and I explained the situation to you.

Q. Then Mr. Shepherd left after he introduced you?

A. Yes. I think he sat around for a while. I don't think he left at that time. No, sir; he sat there for a while.

Q. Go ahead.

A. And I distinctly put our cards on the table and I told you that we wanted to set up an independent organization; that we wanted you to work up the constitution and bylaws; that we didn't have any money, and if you were willing to take a chance, it was entirely up to you. That was the only thing we could offer you; that if we did have an organization we could pay you, and if we didn't have an organization, we didn't know where the money was coming from, unless we took a collection and paid you.

Q. As a matter of fact, was there any discussion previous to that time as to how you were going to pay an attorney?

A. Well, that question, I think, was brought up in our
4864 meeting and somebody said, "Well, how would we pay a lawyer like that?" I don't know whether I said, or somebody else said, "Well, we will just have to take a collection, I suppose, from our members, and just pay him, if it falls through."

4865 Q. Mr. Underwood, did you get any idea as to what this was going to cost you?

A. I asked you what it was going to cost us. I came back, and some of the men from Norfolk had asked if I would find out approximately what the lawyer would charge. We got up to leave and I came back to your office and asked you how much you would charge us. I had explained to you there would probably be a meeting in Richmond and in Norfolk that you would have to attend and explain the constitution or whatever you worked up, and you told me if you had to make a trip to Norfolk and a trip to Richmond and work up a constitution it would be approximately $250.

Q. In any event, did I agree to appear on that basis?

A. Yes, sir.

4868 Q. What was the result of that conversation with Mr. Tatem?

A. Mr. Tatem asked me to go out.

Q. Out where?

A. To Mr. Elliott's meeting.

Q. He asked you to go out to Mr. Elliott's meeting at 18th Street Car Barn?

4869 A. Yes, sir.

Q. Did you go?

A. Yes, sir.

4870 Q. What were you supposed to tell those men?

A. Just what action we had taken in Richmond and all over the system insofar as the organization was concerned.

Q. You did make a talk to the men?

A. Yes.

Q. About how long was it?

A. I think I talked probably a half hour, and it seems to me I answered questions for another half hour.

Q. Did you tell the men what had taken place in Richmond?

A. Yes, sir; I did. I explained just as fully as I was able to explain what our plan was and what we were doing.

Q. At page 502 of the record Mr. Elliott testified about your talk as follows and I am quoting it:

"So during his talk he begged the men to forget our 30-day plan and come on and join the system-wide organization, and we could accomplish a whole lot with the company, and he said that the company would absolutely refuse to deal with the C. I. O. or the American Federation of Labor; that they had a lot of money to fight such organizations; and that he knew through his acquaintances in a circle up in Richmond, that the company was going to be very favorable to his organization; and he told

4871 us that the path of least resistance was the best path to take in this particular case, and that that path of least resistance was through an independent system-wide union."

Q. Did you make any such statement to that meeting?

A. I did not.

Q. Did you state that the company would absolutely refuse to deal with the C. I. O. or the American Federation of Labor?

A. I didn't make any such statement as that.

Q. Did you state that the company was going to be very favorable to your organization?

A. I had no reason to say that. No, sir; I did not say it.

Q. Did you have any organization at that time?

A. No, sir.

4873 Mr. WHITE. It is stipulated that this witness would testify relative to the June 15th, 1937, meeting at the American Legion Hall in Richmond, Virginia, and testify to substantially the same facts as have already been testified to by Mr. Tatem and Mr. Morris and Mr. Bertolett.

Mr. HILTON. That is the meeting where the constitution and by-laws was adopted?

Mr. WHITE. That is right.

Mr. HILTON. All right. That was by the committee?

Mr. WHITE. Yes; by the committee.

4874 Mr. WHITE. It is stipulated that this witness would testify to substantially the same facts as have already been testified to by witness A. B. Bertolett in regard to the proceedings of the meeting held on June 23, 1937, at the American Legion Hall in Richmond, and June 29th, 1937, the meeting of July 6, 1937, and the meeting of July 16, 1937, all of which meetings were held at the headquarters of the organization at 401 East Franklin Street, Richmond, Virginia.

By Mr. WHITE:

Q. You attended the meeting at the Nansemond Hotel, did you not?

A. Yes, sir.

Mr. WHITE. If you don't mind, I will stipulate that one also.

Mr. HILTON. All right.

Mr. WHITE. It is stipulated that this witness would testify with regard to the proceedings at the meeting at the Nansemond Hotel at Ocean View on July 17th and 18th, 1937, and give substantially the same facts as have already been testified to by the witness, W. W. Faust.

4876 Mr. WHITE. It is stipulated that this witness would testify to substantially the same facts as witness W. W. Faust regarding the negotiation of the contract between the I. O. E. and the Virginia Electric and Power Company on July 30, July 31, and August 1, 1937, and also with respect to the final signing of the contract on August 5, 1937. Is that all right, Mr. Hilton?

Mr. HILTON. Yes.

4883 Cross-examination by Mr. MOORE:

Q. Did anybody connected with the company, on the management side of the company, ever suggest or intimate to you that anybody connected with the management would like for you to be active in the formation or carrying on of the Independent Organization, or was that entirely a matter that was determined by yourself and in conjunction with your fellow employees?

A. Myself. Nobody in any way, no company official, told me that they wanted me to have anything to do with it.

Q. Did anybody connected with the management of the company ever suggest even, or intimate to you in any way, a preference as to whether or not the management of the company would like for some such organization as that to be formed?

A. No, sir. No, sir.

Q. Now, to the best of your knowledge and belief, from the inception of this matter, as you have described, up until the present time has there ever been any financial aid or other support given to the organization by the company?

A. No, sir; no financial aid.

4894 Q. Had you had any experience of any kind whatsoever with any labor organizations up to May 28, 1937?

A. No, sir.

4898 By Mr. HILTON:

Q. Had you heard it generally discussed among the employees as to their right to form or join any labor organization?

A. You mean approximately what time?

Q. May 24th—around that time.

A. May 24th?

Q. Yes.

A. I don't remember anyone discussing whether they had the right to join anything.

Q. Now that you have read Board's
4902 Exhibit No. 4, do you recall Mr. Stribling reading Section 7 of the National Labor Relations Act?

A. He read the whole thing.

Q. Did he read Section 7 more than once?

A. No, sir.

Q. Were any questions asked by any of the employees present——

A. No, sir.

Q. In connection with the speech.

A. Not to Mr. Stribling or to Mr. Cary or to Mr. Tutweiler.

Q. Then, after the speech was read, the officials left; did they not?

A. Those three; yes, sir.

Q. And did they make any suggestion as to what the men should do after they left?

A. No, sir; not a thing They just walked out. Mr. Stribling motioned to Mr. Cary and Mr. Tutweiler, and they left.

Q. And they left you men in the room; is that right?

A. In the room; yes, sir.

Q. Was there any mention made of any petitions that had been filed with the company by Mr. Stribling?

A. No, sir; unless it was in the prepared statement that he read.

Q. What was the first thing you men did after the officials left?

A. Well, frankly, myself, I didn't know just what it was
4903 all about. I don't think any of them did, but someone spoke up and said—well, I imagine he was like I was—why they should call us together and read that to us, and someone spoke up there and said he understood that some of the other departments were appointing representatives to see what they could get.

Q. Do you mean with respect to hours, wages, rates of pay, and general working conditions?

A. I imagine so, because I know my bunch—I particularly recall somebody said something about if we get a raise, we want to get into it, if anybody is going to get any money.

Q. Then you got into it, did you not?

A. Yes, sir.

Q. Was it your understanding that the speech was read to you by Mr. Stribling for the purpose of you men forming some kind of an organization?

A. No; I wouldn't say that he left that impression with me.

Q. What impression did he leave on you?

A. Well, the impression I first got, I thought Mr. Stribling just came in, and out of a cold, clear sky read this statement, and politely walked out. Personally, I didn't have any opinion as to why he read it or what we should do.

Q. Did you not have any opinion as to the purpose of Mr. Stribling in reading that speech to you?

A. No, sir; except that Mr. Holtzclaw meant that we
4904 could form or join any labor organization we wanted to, except that the bargaining should be—that they should represent a large group, rather than a small group.

Q. You yourself knew it was not easy for the company to deal with a lot of small groups scattered among the various departments of the company?

A. Not at that time; no, sir. I didn't see any reason why they shouldn't deal with one group, as well as any other group, at that time.

Q. You knew at that time that the company was divided up into the Norfolk division and the Richmond division, did you not?

A. Yes, sir.

Q. Well, was it your understanding that if the group from the Richmond division wanted to bargain for the employees in Richmond that they would be the appropriate group?

A. I said I didn't have an understanding as to what they meant by any particular group.

Q. Well, you had hardly any understanding about any kind of a labor organization at that time, anyhow, did you?

A. I did not; no.

Q. Had you ever read the National Labor Relations Act yourself?

A. No, sir.

Q. Have you ever read it?

4905 A. No, sir.

Q. How long did you men have this meeting after the officials left?

A. I imagine it lasted, maybe, 10 or 15 minutes. Some of the men drifted out of the meeting after they had elected me chair-

man. Some of them drifted back to their work, and I stood there and talked to some of them.

Q. What did you do as chairman of the committee that you had been elected of?

A. At what time?

Q. At this meeting on May 28th.

A. What did I do?

Q. Yes: what did you do?

A. Well, I went back into my office and tried to find out what was going on in the other departments.

4910 Q. As representative of this group you contacted Dave Harrison at the 12th Street Plant in Richmond?

A. Yes.

Q. How is it you happened to contact Dave Harrison?

A. He is a system operator.

Q. You had known Harrison before that, hadn't you?

A. Yes. I had worked with him.

Q. Dave Harrison told you that he had been elected representative at the 12 Street Plant, didn't he?

A. No. You see they had different ones from different departments appointed to go to this meeting at Mr. Holtzclaw's. And the system operating office is in the 12th Street Plant, the actual operating office. There are five of them. He had been appointed by his men to go with the other 12th Street boys up there.

Q. Why was it that you happened to call Harrison and not any of the other system operators at the plant?

A. Harrison was on duty.

Q. He was on duty?

4911 A. There is only one man on duty. There was only one man on duty at the time.

Q. He just happened to be on duty at that time?

A. I believe Harrison told me Holzback had been elected temporary Chairman.

Q. Of a committee? Is that right?

A. Yes, sir.

Q. Then you called Robertson at the 12th Street Plant?

A. Yes. Harrison told me Robertson was one of the men.

Q. Was one of the representatives too?

A. Yes.

Q. Then you called Norfolk at the Reeves Avenue Plant and talked with Jones, didn't you?

A. Yes.

Q. Did you make all of these telephone calls immediately after your meeting on May 28th?

A. I don't know whether I went out to lunch and came back after lunch and made it or not. I don't know exactly when I did it. It was sometime that afternoon.

Q. And you made all of them over the company telephone?

A. Yes.

Q. And during working hours?

A. Yes.

Q. Did you have any work to do when you making all
4912 of these different calls?

A. Yes.

Q. What did you do? Did you let your work go?

A. No. I worked a great deal of overtime.

Q. You worked overtime in order to make up for the time lost?

A. I work any time when I have work to make up or do.

Q. Was Mr. Cary present when you were making these telephone calls?

A. Some of them.

Q. Was he near you when you were making the calls?

A. I don't recall whether he was near me or whether he was in the office or out. But his desk is within ten feet of mine.

Q. So if you were speaking in the average tone of voice he could hear what you said over the telephone?

A. He couldn't hear what I said.

Q. Did you purposely conceal what you were saying?

A. No. I have a habit of talking very low on the phone. I had to get that habit when I was in the system operating office where there were two or three men working at the table in case of trouble.

One of the first thing I learned to do was to pitch my voice
4913 so that the other person could understand but no one else in the room could hear the conversation.

Q. So that training came in very handy at that time?

A. I mean it did. It did all along.

Q. On your call to Mr. Jones in Norfolk, did you put that through the telephone switchboard?

A. Yes.

Q. Did you have any trouble in putting it through?

A. I don't know whether they said the line was busy or I had to wait until the line was not busy or what. I got the call.

4924 Q. Well, was it generally understood at that meeting on June the 1st that your organization was going to be an independent one?

A. Yes, sir. Yes, sir; because most of the men discussed that they wanted an independent one.

Q. Now, did you report back to your department what had happened at this meeting on June the 1st?

A. Not in a group; no, sir.

Q. You told them individually?

A. Yes, sir.

4925 Q. And did they all approve of what you had done at this meeting?

A. Yes, sir.

Q. After this meeting of June the 1st did you ever, say, have a vote by the men in your department that you were representing as to what kind of organization they wanted?

A. No, sir.

Q. Did you ever get any written authorization of any kind which authorized you to act for and on behalf of the men in your division?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. When did you get that?

A. I think that was the morning before I went to that meeting on June the 1st, before I went to that meeting that night.

4926 Q. So that you deemed you had authority to put your group in any organization that you wished; is that right?

A. Not necessarily at that time, no, sir; but to look after their interest.

Q. And "by looking after their interest" you believed you were authorized to put them in an independent organization?

A. No, sir. I came back and talked to some of the men, and the concensus seemed to be in the group that they wanted an independent organization.

Q. As a matter of fact, it was unanimous to have an independent organization, wasn't it?

A. When?

Q. At this meeting on June the 1st.

A. Yes, sir; except I had no authority then for my group to come into any kind of organization. I was just to look after their interest.

Q. Was any vote taken by the representatives at this meeting on what kind of organization they wanted to form?

A. I don't remember whether a vote was taken or not as to forming an independent organization.

Q. Did you see any written authorizations which any of

4927 the other representatives had at that meeting on June the 1st?

A. I think some of them had them with them.

Q. Did you have yours with you?

A. Yes, sir; I had mine with me.

Q. Were you ever asked to produce that at the meeting?

A. I don't know whether I was asked to produce it, but most of the men , "I have one."

Q. And where was that meeting held on June the 1st?

A. In the service building auditorium.

Q. Then, on June the 2nd I believe you called Jones in Norfolk, did you not?

A. Yes, sir.

Q. Now, what was the purpose of this meeting of June the 1st?

A. June the 1st?

Q. Yes

A. Well, I really did not know the purpose until after I got there except there was going to be a meeting of the representatives from the different departments.

Q. For what purpose?

A. To discuss the formation of some bargaining agent or bargaining group.

4929 Q. And then the following day you called Jones at Norfolk, did you not?

A. Yes, sir.

Q. What was your purpose in calling Jones?

A. In Norfolk?

Q. Yes.

A. I was calling everywhere.

Q. Well, it did not cost you anything, I understand that, but why did you call Jones?

A. I stated I was interested in what was going on.

Q. Didn't you call him with respect to holding a meeting with the Norfolk committee?

A. The first time I talked to him?

Q. June the 2nd.

A. Oh, June the 2nd. I asked him who was chairman of the group in Norfolk. June the 2nd, that was the day they were supposed to meet us. That is how I got to call him.

4930 Q. And Jones did not know who was chairman of the Norfolk committee, but did call back the information to you; did he not?

A. Yes, sir.

Q. And you later learned that Nickerson was chairman of the Norfolk committee?

A. He called me back and told me that.

Q. You then made arrangements for the meeting in Petersburg that night?

A. Yes, sir.

Q. What was your purpose in contacting the Norfolk committee?

A. Because this meeting we had—they asked me, as chairman, to contact Norfolk and see what was going in Norfolk, and if possible, to bring the Norfolk group, whoever was in that group in Norfolk, if they had a group, together with the Richmond group.

Q. In other words, you wanted to have a system-wide organization, did you not?

A. Yes, sir.

Q. And those calls, of course, were made over the switchboard?

A. Yes, sir.

Q. Were you working at the time you made those calls?

A. Yes, sir.

4931 Q. At that meeting in Petersburg on June 3rd, did you ask the Norfolk representatives for credentials which would show that they represented the majority of the men in their various departments?

4932 A. Yes, sir. Mr. Elliott raised the question himself as to whether or not the other Norfolk group had any rights.

4933 Q. At this meeting the two groups decided then to form a system-wide organization?

A. Yes, sir; I think that was the opinion reached in that meeting, that we would attempt to form a system-wide organization; yes, sir.

4937 Q. Did you tell Mr. White that you wanted your organization set up in the form of a general committee which would be the governing body of that organization?

A. No; I don't think that I—the only thing that I knew was we didn't want too much power in one man's hands.

Q. Did you tell Mr. White you wanted interdepartmental committees?

A. No, sir.

Q. Did you not furnish any of that information to Mr. White?

A. No, sir; I just told him our system was set, and we wanted a constitution and bylaws to cover the whole system.

Q. You let Mr. White use his own discretion as to what kind of an organization he would set up, provided it was in-

4938 dependent?

A. What kind of a constitution and bylaws; yes, sir, and I had explained to him, by drawing a diagram, as to what our system set-up was.

Q. Do you mean the company's system set-up?

A. Yes, sir; yes, sir.

4966 Q. Did you know your bylaws provided for a check-off of dues?

A. I knew we had an assignment of pay that we normally have with the company.

Q. And had you consulted with any of the officials of the company with respect to this check-off of dues?

A. No: I had not.

Q. Is there any reason you can give why your bylaws provide for a check-off system?

A. That is the easiest way to collect the money and the best way to collect the money.

4976 Q. Now, I show you what is in evidence as Respondent's Exhibit No. 40-D, and ask you if that is the affidavit you filed pursuant to that request on July 30th [handing the exhibit to the witness]. Is that the affidavit you filed?

A. That I signed; yes, sir.

Q. As far as you know, was that the only evidence that the I. O. E. represented a majority of the employees that was ever submitted to the company?

A. No; that was not the evidence, because when we bargained, we had the cards on the table there, and Mr. Holtzclaw asked Mr. Moore, if I am not mistaken, if he was satisfied, and Mr. Moore said he was satisfied through checking it that this group were a duly authorized bargaining agent; yes, sir.

Q. When were those cards first turned over to Mr. Moore, who was counsel for the company?

A. I don't think the cards were ever turned over to Mr. Moore.

Q. Was that the first time that you ever produced the cards, that is, on the morning of July 30, 1937, when you brought them in and negotiations had started?

4977 A. Yes, sir.

Q. That is the first time?

A. Yes, sir.

Q. And you were then given a reasonable time within which to submit an affidavit to the effect that you did represent a majority of the employees?

A. Yes, sir.

Q. As far as you know, were the cards that you submitted, or that you had at the meeting of July 30, 1937, ever checked against any pay-roll list of the company before the agreement was signed?

A. I think Mr. Bertolett—Mr. Bertolett, membership secretary—attended to that.

Q. And when did Bertolett check those cards against the pay roll of the company?

A. I couldn't tell you exactly the time that he did it. My duties to a certain extent, and Mr. Bertolett's were sort of widely separated. He attended most of the office work and such stuff.

Q. You knew that was a very important item in your bargaining, did you not?

A. Oh, sure I did. I took Mr. Bertolett's word that that stuff had been done.

Q. Was it your understanding that the cards, the I. O. E. membership cards, or the other part of the card, which
4978 authorized the deduction of dues from the member's pay, was turned over to the company before July 30, 1937?

A. I don't know whether they were turned over—no, sir; I don't think they were turned over to the company before. I don't think they were ever turned over to the company, except the assignment cards.

Q. What I want to know is when, if you do know, there was any check made by anyone on the part of the I. O. E. of the members that you had against the pay-roll record of the company.

A. Yes, sir; that day before the cards were brought in, we checked over them as we went along.

Q. As you went along?

A. As the membership secretary and Mr. Bertolett—as the cards began to come in, against the lists that they had.

Q. And your cards started to come in around the 18th of June, did they not?

A. Some of the Richmond cards came in around about that time.

Q. And on June 14th a request, a written request, had been made upon the company by Mr. Bertolett, I believe, for a copy of the pay-roll record of the company. Do you recall that?

A. If that is the date that shows on the letter, yes, sir. That was the date the request was made.

Q. Then, approximately six or seven days later, you did?
4979 A. Yes, sir.

Q. When was the first time, as far as you know, that the I. O. E. represented a majority of the employees of the Virginia Electric & Power Company?

A. On the whole Virginia Electric & Power Company, I would say within two weeks of the time that we got those membership cards out.

Q. You would say, then, that you had a majority of the employees of the Virginia Electric & Power Company; is that right, as members of your organization, by the 3rd or 4th of July 1937?

A. I imagine we had. I don't say we had a majority of any one department. We had a majority in the Virginia Electric & Power Company signed up, I imagine, before that time.

Q. Before that time.

A. I mean before July 3rd, because those cards began to pile in.

Q. So that taking the unit as a whole, that is, all the departments as a whole, you did have a majority?

A. The whole system; yes, sir.

Q. On July 5th or 6th you did have a majority?

A. Yes, sir; because after the whole transportation department was signed up, probably there was a small group, two or three of them had been signed, but that wouldn't have been a majority of the small group, but as a whole that would

4980 have receive a list of the employees of the V. E. & P. Co., did you not?

4985 Q. Your check-off immediately went into effect when the agreement was signed, did it not?

A. No; I think we have dates that show when we should get that amount of money for the check-off.

Q. I hand you a letter which is dated August 20, 1937, on the stationery of the Virginia Electric & Power Company, addressed to yourself, and ask you if you received that letter [handing a letter to the witness].

A. Yes, sir; I got this letter, Mr. Hilton. I got that letter.

Mr. HILTON. I would like to offer this in evidence as Board's exhibit No. 53.

Trial Examiner FORT. It will be received.

(The document above referred to was marked "Board's exhibit No. 53" and received in evidence.)

By Mr. HILTON:

Q. It is a photostat of that, is it not, Mr. Underwood?

A. Yes, sir.

4986 By Mr. HILTON:

Q. Now, according to Board's exhibit No. 53——

A. That is the one here?

Q. The one you have just identified—you received the sum of $3,784.50, which represented dues for one-half year, ending December 31, 1937. That is correct, is it not?

A. Yes, sir; I received that check.

Q. Referring to that sum of money that you received, did you put any of that aside for a strike fund?

A. For a strike fund?

Q. Yes.

A. No; I don't think we put any of it aside for anything. We had to pay a great deal of it out.

Q. You had a great many bills to pay?

A. Yes; we did.

Q. There were certain men who were discharged after August 20, 1937, and their dues had been checked off by the company and turned over to the organization, had they not?

4987 A. In advance, including the pay that we received for the preceding three months, in advance—or six months.

Q. On August 20th you received a half year's dues for each and every member of your organization?

A. Yes, sir.

Q. That was each and every member employed by the company?

A. Each and every member of the organization.

Q. Now, did you have any members of your organization from whom you had collected dues and who were later discharged?

A. We had one member that was promoted and taken out of the organization. I don't know about discharged; no, sir. I don't know that there were. If you want to know if we deducted it and whether we turned the money back to the men or not, we did not.

Q. You never turned the money back?

A. No, sir; if that is what you were going to ask. Now, if they were discharged and requested the money, I don't know whether they requested the money or not.

Q. You said, of course, you made no provision out of this $3,784.50 that you received for any strike fund or benefit fund of any kind.

A. No, sir.

Q. Of course, you knew that the constitution and bylaws did not provide for a strike, anyhow?

4988 A. Yes, sir; I knew that.

4993 Redirect examination by Mr. WHITE:

Q. Did you handle these several telephone calls that you testified you made at the office in the early stage of this matter so as to keep the facts that you were telephoning to several of these people to yourself?

A. I certainly did. I talked sometimes in the office and I talked low, and sometimes, I admit, I went up into the switchboard room and used the phone up there in the switchboard room.

4994 Q. What I am trying to get at is did you handle it in such a manner as to keep Mr. Cary from knowing that you were doing it?

A. Yes; absolutely.

Q. That is what I wanted to know?

A. Yes; I did.

4996 GEORGE A. ROBERSON, a witness called for and on behalf of the Intervener, being first duly sworn, was examined and testifies as follows:

Direct examination by Mr. White:

Q. What is your name?

A. George A. Roberson.

Q. Where do you live?

A. 600 Arnold Avenue, Richmond, Virginia.

Q. By whom are you employed?

A. The Virginia Electric and Power Company.

Q. In what capacity?

4997 A. Electrician, shift electrician, maintenance electrician, emergency operator.

Q. At the 12th Street Power Plant in Richmond?

A. That is right.

Q. What is your connection with the I. O. E.?

A. I am a member of the Interdepartmental Committee and at present I am a member of the General Committee.

Q. Representing what voting section?

A. Production, maintenance, and construction.

Q. Are any of your duties of a supervisory nature?

A. None whatsoever.

Q. Mr. Roberson, I believe on May 24, 1937, the superintendent of the Power Plant called all of the employees into a room there and the foreman operated the plant while the employees came in. Is that correct?

A. That is correct.

Q. At that meeting the superintendent explained to you that there was to be a meeting downtown to be addressed by Mr. Holtzclaw and that he thought you ought to elect some representatives to go down there. Is that right?

A. That is correct. He didn't give us any specified number.

4998 Q. He just said he thought you ought to select some to go if you wanted to?

A. He said possibly three or four or five.

Q. As a result of that you and certain others were elected to go down there? Is that right?

A. Mr. G. P. Colonies, D. D. Harrison.

Q. Who else?

A. T. A. Stuart, and Joe Gaines, colored.

Q. And you were the other representative?

A. That is right.

Q. When you got there had the proceeding begun or did you get there before they started?

A. Before they started.

Q. Did you hear everything Mr. Holtzclaw said there that night?

A. I think I did.

Q. Please state your recollection of what Mr. Holtzclaw said and did that night at that meeting?

A. Mr. Holtzclaw read an article on the Labor Relations Act, or whatever you call it, and a short article, although I don't remember any particular part of it, and then afterwards he told us we

4999 could organize, that we could join the C. I. O., we could join the A. F. of L., or we didn't have to have any organization. In other words, it was our baby.

Q. In other words, you could do what you pleased?

A. Yes.

Q. Did he indicate that he had any preference as to what you did?

A. He did not.

Q. Did he say anything about having received petitions from various groups?

A. I think he stated that he had received a petition from some group, unnamed, asking for collective bargaining, or something like that.

Q. Did he say whether he would consider such petitions?

A. He said that he could not bargain with any part of a group, that he would have to bargain with a majority of the employees.

Q. What, if anything, did Mr. Holtzclaw say that night about a raise?

A. Nothing whatsoever.

Q. Did he make any statement as to anything taking place in the way of changes on June 1st?

A. He said any change that was made would be retroactive as of June 1st. But he made no statement as to a raise or money whatsoever.

5000 Q. I understand after that meeting that you went back and another meeting was held at the Power Plant by all of the employees there. Is that right?

A. That is correct. All below the grade of foremen.

Q. At that meeting an election was held as to what the men wanted to do in the line of organization?

A. Yes.

Q. And that election was held by secret ballot? Is that right?

A. That election was not the same day. It was the next day. We went back there the next day.

Q. Well, state what took place?

5001 A. We went back the next day, and we had an election by holding up our hands on who was to represent us on anything that came up.

Q. Who was elected?

A. I happened to be the goat.

Q. Then what happened?

A. The next step was to see what they wanted.

Q. What did you do to find out what they wanted?

A. I had some ballots drawn up. Shall I state what they were?

Q. Yes.

A. On these ballots I had at the top, "Do you wish the C. I. O. organization, the A. F. of L. organization, an independent organization, or no organization?"

Q. Where did you have those ballots made?

A. A brother of mine made them in the C. O. office.

Q. He had no connection with the Virginia Electric and Power Company, had he?

A. Hardly.

Q. When did you have a meeting to present those ballots to the men?

A. We didn't have a meeting. We borrowed an automobile and bought gasoline and carried them around and picked them up at home.

Q. All of your men voted at home? Is that right?

A. Not every one of them. I wouldn't say that, but I
5002 would say the majority of them did.

Q. Where did the rest of them vote?

A. Probably in the plant.

Q. What was the result of that vote?

A. As nearly as I can recall, it was 22 votes for the C. I. O., and 21 of them colored; one vote for the A. F. of L. by a member who was already a member of the A. F. of L.; and 92 or 94 for an independent organization; and I think 6, 7, or 9 for no organization.

Q. As the outcome of that you took it as the sense of that group there that they wanted an independent organization? Is that right?

A. That is correct.

5003 Q. You attended the meeting on June 1st at the Service Building, I believe you stated?

A. Yes, sir.

Mr. WHITE. I would be willing to stipulate the evidence of this witness from this point on, so far as meetings are concerned.

Mr. HILTON. All right.

Mr. WHITE. It is stipulated that this witness would testify to substantially the same facts as have already been testified to by A. D. Bertolett and E. T. Underwood as to the meetings of June 1st, 1937, the minutes of which are in evidence as Intervener's Exhibit No. 33. The meeting of June 9, 1937, the minutes
5004 of which are in evidence as Intervener's Exhibit No. 35. The meeting of June 15, 1937, the minutes of which are in evidence as Intervener's Exhibit No. 22. The meeting of June 23, 1937, the minutes of which are in evidence as Intervener's Exhibit No. 38. The meeting of June 29, 1937, the minutes of which are in evidence as Intervener's Exhibit No. 39. The two meetings of July 6, 1937, the minutes of which are in evidence as Inter-

vener's Exhibit No. 40. The meeting of July 17, 1937, at the Nansemond Hotel, Ocean View, the minutes of which are in evidence as Intervener's Exhibits Nos. 16–A, 16–B, 16–C, 16–D, 16–E, and 16–F.

5006 By Mr. WHITE:

Q. Now, Mr. Roberson, have you ever seen any evidence of company interference with the I. O. E.?

A. I have not.

Q. Do you know of any financial support the company has ever given to the I. O. E.?

A. None whatsoever.

5007 Cross-examination by Mr. MOORE:

Q. Now, you referred to the fact that in connection with certain ballots during the early stages of this matter which were used by the employees there at 12th Street that you
5008 went up and got those ballots fixed up with four kinds of votes on them.

A. Correct.

Q. Either C. I. O. or A. F. of L., or Independent, or nothing?

A. Yes.

Q. Did the idea of getting up a ballot of that sort spring entirely from your head or did somebody put that idea in your mind, or where did it come from?

A. It was my own idea. I went out with the idea of finding out what organization they wanted. I did not have any idea what they wanted.

Q. Had anybody suggested to you that you do any such thing, or was it entirely your own idea?

A. It was entirely my own.

5009 Q. Then you went around yourself in your own automobile and picked them up?

A. I did not have one; I hired one, and bought the gas.

5010 Cross-examination by Mr. HILTON:

Q. Well, did you believe that any labor organization was necessary?

A. I thought so; yes.

Q. What kind did you believe was necessary?

5011 A. What kind?

Q. Yes.

A. Well, my own idea was that—anything but the C. I. O.

Q. Even the A. F. of L.?

A. Even the A. F. of L. was a wonderful organization at one time.

Q. When did you change your opinion as to the A. F. of L.?

A. All these strikes, and they and the C. I. O. got tangled up together.

Q. And that was around May 20, 1937?

A. I suppose around there.

Q. Was there any doubt in your mind around May 20, 1937, of your rights under the National Labor Relations Act?

A. None whatsoever.

Q. You knew that you could form or join any labor organization of your own choosing, did you not?

A. Absolutely.

5012 Q. Now, Mr. Holtzclaw in his speech on the 24th stated that certain petitions had been received with respect to working conditions among the employees, didn't he?

A. I did not say that. That is not the statement I made.

Q. I am saying, did he make that statement?

A. No.

Q. What did he say in connection with receiving petitions from employees of the V. E. P.?

A. He said—my understanding was he had received petitions for collective bargaining, or something to that effect.

5013 Q. And by "collective bargaining" you understood that the men wanted at least some changes in the general working conditions?

A. I did.

Q. So you knew the petitions related to labor conditions, anyhow?

A. Absolutely.

Q. And Mr. Holtzclaw stated that the company could not deal with any small or isolated groups of the employees. Did he make that statement?

A. To the best of my recollection, he did.

Q. And did you understand by that that if there was to be any kind of organization of the employees it would at least have to be department-wide in the company?

A. It would at least have to be a majority.

Q. A majority of what?

A. Majority of employees, I would say.

Q. Majority of all the employees?

A. That was my understanding.

5016 Q. After Mr. Holtzclaw's speech the representatives had a meeting, did they not?

A. Yes.

Q. Now, at that meeting was any chairman elected of the group of representatives?

A. Mr. Holzback.

Q. Now, wasn't it agreed by this group of representatives under Mr. Holzback that they would meet on June the 1st, 1937?

A. They made arrangements to meet, but for some reason or other, I have forgotten which, they did not happen to meet.

Q. They did not meet on June the 1st?

A. They did not.

Q. And then was it the following day that you reported the occurrences of the speech of May the 24th to the men in your plant?

A. I think it was.

Q. Was that meeting held on company time or company property?

A. It was.

5017 Q. Of course, you had the permission of the superintendent to hold that?

A. I did.

Q. Was it the following day that you had the ballots prepared to find out what kind of an organization they wanted?

A. I wouldn't say it was the following day.

Q. Well, right around that time, was it not?

A. Well, it was within two or three days, anyway.

Q. And the results of the counting of the ballots were that the men wanted an independent organization?

A. Correct.

Q. And you wanted an independent organization yourself, did you not?

A. I did.

5020 Q. Now, did you give any of the men in your department an opportunity to vote on the proposed agreement that was submitted by the I. O. E. to the V. E. & P. Co.?

5021 A. Do you mean the contract?

Q. Yes; the contract.

A. Absolutely.

Q. When was that?

A. I don't remember the date.

Q. Was it before the contract was signed?

A. Absolutely.

Q. Do you remember when the contract was signed?

A. August 4th, wasn't it?

Q. When was it you gave them an opportunity to vote on it, if it was signed on August 4th?

A. Between the time we got it up and the time it was turned over to the company. I couldn't remember the date.

Q. When did you get it up? Do you remember when you got it up?

A. Not the date. It took some time for us to get that up. In other words, we had to find out what the majority wanted, and we didn't have but one meeting, but a series of meetings, to agree or disagree on whatever it might be, what they wanted for their portion in that contract.

5035 Mr. WHITE. Mr. Examiner, it is stipulated that George Colonies, an employee of the Virginia Electric and Power company, employed in the 12th street plant in Richmond, is here present and, if called as a witness, would testify as follows:

That the testimony of the witness Roberson as to the meetings held by the employees of the 12th Street plant is in accordance with his recollection of those events; that the testimony of Witness Roberson with respect to the meeting addressed by Mr. Holtzclaw on May 24th, 1937, is true; that the testimony of W. W. Faust and the testimony of A. D. Bertolett as to the meeting at the Nansemond Hotel on July 17th and 18th, 1937, is correct; that he is now representative on the Electric Division Committee of the I. O. E. in the Production Operating Group, and that he is chairman of the Richmond Interdepartmental Committee.

Mr. HILTON. We agree to the stipulation as stated by Mr. White.

Mr. MOORE. We agree, Mr. Examiner.

Mr. WHITE. It is further stipulated, Mr. Examiner, that Mr. N. Staughton is here present and, if called as a witness, would testify that the testimony of witness A. D. Bertolett as to

5036 the meetings of the employees in the service building in Richmond is true and that the votes taken by the employees in the service building on May 26, 1937, were taken, with the result testified to by the said witness Bertolett; that his testimony as to all of the meetings held by the Richmond Steering Committee and testified to by the witness A. D. Bertolett would be the same as the testimony given by the said witness Bertolett; that his testimony as to a meeting at the Nansemond Hotel on July 17th and 18th, 1937, would be the same as that of witness W. W. Faust and witness A. D. Bertolett; that he was elected as a representative of the Distribution Construction Voting Section at the election of July 12, 1937, and is still the representative of that voting section on the Electric Division Committee.

Mr. HILTON. We agree to the stipulation.

Mr. MOORE. We agree, Mr. Examiner.

Mr. WHITE. It is further stipulated that witness R. K. Milburn is present and, if called as a witness, would testify as follows:

That he is employed as a lineman by the Virginia Electric and Power Company at Petersburg, Virginia; that he is a member of the grievance committee in Petersburg in the Distribution Construction voting section; that the employees in Petersburg were

called together by J. F. Pond, the superintendent, on May 24, 1937, during working hours, on company property, and told that there would be a meeting in Richmond that night to be ad-
5037 dressed by Mr. Holtzclaw; that this was the only meeting in Petersburg the witness attended on company property, but that he did attend a mass meeting at the Y. M. C. A. in the City of Petersburg, which is not in any way connected with the Virginia Electric and Power Company, at which the majority of the employees of the company in Petersburg were present and at which the constitution of the I. O. E. was explained; that this meeting was between June 15th and June 20, 1937, and that the majority of those present signed cards at that meeting.

Mr. HILTON. We agree to the stipulation.

Mr. MOORE. We agree to it.

Mr. WHITE. It is further stipulated that Witness J. F. Butler is here present and, if called as a witness, would testify that he is a bus operator employed by the Virginia Electric and Power Company in the City of Petersburg; that he attended the meeting called by Mr. Pond in Petersburg but did not attend the meeting addressed by Mr. Holtzclaw, although selected as a delegate to go; that he received a report of that meeting from George J. Shepherd, who had attended that meeting, and that he did attend all meetings of the Richmond Steering Committee beginning June 1, 1937, and up to and including the meeting of July 16, 1937, and that his testimony as to the proceedings of those meetings would be the same as the testimony of A. D. Bertolett; that he is now serving as grievance man for the bus group.

5038 Mr. HILTON. We agree to the stipulation, Mr. Examiner.

Mr. MOORE. I would like to have the record show that so far as we are concerned that we have no knowledge as to the facts stated by Mr. White in these stipulations, but inasmuch as they appear to be corroborative of the statements made by other witnesses as he has outlined them and since we are willing to accept Mr. White's statements that these witnesses would so testify, we consent to the stipulations.

McCAMIE D. HOUGH, a witness called for and on behalf of the intervener, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. WHITE:

Q. Will you please state your name?

A. McCamie D. Hough.

Q. Where do you live?

A. 111 West 17th Street.

Q. In Norfolk?
A. Yes, sir.
Q. By whom are you employed?
A. The Virginia Electric and Power Company.
Q. In Norfolk?
A. Yes.
Q. In what capacity?
A. Streetcar operator.
5039 Q. How long have you been employed?
A. Since August 1930.
Q. You have been employed continuously as a streetcar operator by the Virginia Electric and Power Company since August 1930?
A. Yes, sir.
5041 Q. It has been testified that there was another notice
5042 posted in the dispatcher's office sometime around May 7th or 8th, 1937, with no name signed to it, but calling a meeting. Did you see that bulletin or notice?
A. Yes.
Q. Did you attend that meeting?
A. I did.
Q. Where was that meeting held?
A. In the Y. M. C. A.
Q. The Y. M. C. A. you refer to is the company Y. M. C. A. at 18th Street. Is that right?
A. Yes.
Q. How is that maintained?
A. All of the members pay so much per year or so much a month or so much quarterly dues. I believe it is to that Y. M. C. A. I understand that Y. M. C. A. is included in the dues.
5043 Q. What took place at that meeting on May 12th that you remember?
A. Well, I remember Mr. Bishop opened the meeting.
Q. What did he say, if you recall?
A. He only made a few remarks to the men, stating that they had a right to organize to bargain in any way they seen fit or in collective bargaining. He said he couldn't tell them anything to do or make any suggestions himself, and in anything they seen fit to do he wished them the best of luck.
Q. Is that all he said?
A. Yes; to the best of my knowledge.
Q. Did he leave the meeting then?
A. Yes.

5059 WALTER E. HOLZBACH, a witness called by and on behalf of the Intervener, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. WHITE:

Q. Will you please state your name?

A. Walter E. Holzbach.

Q. Where do you live, Mr. Holzbach?

A. 3113-A Patterson Avenue, Richmond, Virginia.

Q. By whom are you employed?

5060 A. The Virginia Electric & Power Company.

Q. In what capacity?

A. Clerk.

Q. Did you attend a meeting on the night of May 24, 1937, at the general office of the Virginia Electric & Power Company in Richmond, which was addressed by Mr. Holtzclaw?

A. Yes, sir.

Q. How did you happen to attend that meeting?

A. Word was circulated around that Mr. Holtzclaw was going to make a talk before the men, and would ask, on account of the limited space, that each department would have one or two representatives. I was chosen as representative of my department.

Q. Do you recall what Mr. Holtzclaw did at that meeting?

A. Mr. Holtzclaw called the meeting to order and said he was there for the purpose of explaining the Wagner Act to the employees.

5061 Q. Did he make any statement as to the particular kind of organization that he wanted you to join?

A. He said that the Wagner Act gave the men the privilege of forming an organization of their own or to affiliate with any other labor organization.

Q. Now, after Mr. Holtzclaw finished speaking, what happened at that meeting?

A. When Mr. Holtzclaw finished his address, he and his group walked out.

Q. Was there anyone left at that meeting afterward——

A. Yes; there were practically 25 or 30 men left, and they began talking.

Q. Was there anyone present at that time in a supervisory capacity with the company?

A. Not to my knowledge.

5062 Q. It has been testified that you were made chairman by that group that was left there; is that true?

A. Yes, sir.

Q. What was discussed and decided upon at that meeting?

A. After Mr. Holtzclaw walked out, just as I said, 25 or 30 of us stood there, and they talked on different phases of the speech.

Some one—I don't know who it was—said that we ought to form an organization. He says, "I believe if we form an organization and carry our petition to the company, we can get results."

Q. Was there any organization formed that night?

A. No. I was asked if I would act as general chairman to push this thing into an organization.

Q. Did you consent to serve?

A. After some coercion on the part of the men, I agreed to accept.

Q. What was the next development in the organization?

A. Well, feeling that I was a representative of my group, I took down notes, and that night I thought the matter over, and I came down to the building the next morning and asked permission to use the auditorium for two meetings, in order that I might explain to those who were not present at the meeting, the Wagner Act, as Mr. Holtzclaw had defined it.

Q. Did you have any difficulty getting that permission?

5063 A. I was first turned down, and when I told them that I only wanted the hall to explain the Wagner Act to those who had not been present at Mr. Holtzclaw's meeting, the auditorium was granted me.

Q. Did you hold those meetings?

A. I posted a notice that the meetings would be held the next morning, one at 8 o'clock, and one at 9 o'clock; for the line department at 8, and for the office force at 9.

Q. Were those meetings well attended?

A. Yes; the auditorium was practically filled.

Q. What took place at each of those meetings?

A. Well, being the first meeting, I took it on myself, as I was the spokesman and I had called it—I got up there and explained to them the Wagner Act, as I had seen it, from Mr. Holtzclaw's statement.

Q. Did the men take any action at that meeting, or at those two meetings?

A. There was some talk, buzzing around, you know, about we could better ourselves if we organized. I don't think anything particular transpired at that meeting. I was asked if I would get in touch with other chairmen and hold a meeting in the future.

5064 Q. I hand you Intervener's Exhibit No. 32, and will ask you if you prepared the letter, of which this is a photostatic copy (handing the exhibit to the witness)?

A. (After examination of the exhibit.) After the two meetings that I held, I called another meeting—I don't know exactly when it was; possibly a week or a few days afterwards, and I suggested that we form what is known as a steering committee to formulate

plans in which this organization could be put into working condition. At that time we had no organization—just a forerunner.

Q. Well, did you send out this notice?

A. That is my signature.

Q. Do you recall where and when you typed that, or had it typed?

A. Yes, sir; at my home.

Q. Did you type it yourself?

A. Yes, sir.

Q. Do you use the typewriter?

A. Yes, sir; the hunt system.

Q. Hunt and peck?

5065 A. Yes.

5067 Q. You sent these notices out of the meeting of June 1st. Where was that meeting held?

A. June 1st? That is that steering committee, wasn't it?

Q. That is right.

A. Yes, in the auditorium of the company's building.

Q. The service building there at Richmond?

A. Yes, sir.

Q. You called that meeting to order there, did you not?

A. Yes, sir.

Q. At that meeting I believe Mr. Underwood was elected chairman and Mr. Bertolett was elected secretary; is that right?

A. Yes, sir.

Q. Was that the last meeting of the so-called steering committee that you attended?

A. The last meeting of any kind that I attended. I turned everything over to Mr. Underwood and Mr. Bertolett.

5070 Cross-examination by Mr. MOORE:

Q. At the meeting on the night of May 24th, as I understand your testimony, after the speech was made by Mr. Holtzclaw, he and the others in the management group withdrew from the room, and there were some 25 or 30 men that lingered on there for awhile?

A. Yes, sir.

Q. And talked.

A. Yes sir.

Q. Do you remember who it was that made this suggestion that he thought it would be a good idea to form an organization?

A. I haven't the slightest idea because there was a lot of them that I didn't know by name, Mr. Moore.

Q. At any rate it does not register on your mind at all as to who it was?

A. No, sir.

Q. Just one of the fellows?

A. One of the 25 or 30.

Q. You did stay there and talk for how long, do you think, after Mr. Holtzclaw left?

A. I reckon practically an hour.

Q. Was there some argument back and forth as to whether it would be a good thing to consider forming an organization?

A. That that spoke seemed to be highly in favor of
5071 forming an organization, that they thought they should get more out of the company.

Q. They thought they could get more if they did?

A. Yes, sir.

5072 Q. There was no decision made at all that night as to what that group wanted to do, was there?

A. No, sir. There was some little talk at that meeting of an organization of our own, but it did not amount to much, you see, just the beginning of the talk. Some suggested that we did not want to have anything to do with an outside organization. I feel we could get more ourselves if we band together as one unit and go to the company with our troubles.

Q. That is the way you felt?

A. That is the concensus of the talk.

5082 Cross-examination by Mr. Hilton:

Q. Did you ever hear of any labor organization trying to organize the employees in 1922, let us say, or from 1922
5083 up to 1936?

A. I don't know about 1936, but Mr. Monahan, if I am not mistaken, has been out on the sidewalk and distributed circulars on some two or three occasion inviting the workers down to the Labor Temple.

Q. Who is Mr. Monahan?

A. He is a representative of the American Federation of Labor.

Q. In Richmond?

A. Yes.

Q. Where did you see him giving out these circulars?

A. Outside of the main entrance of the Service Building, 2400 Grayland Avenue.

Q. Did you ever get one of those circulars?

A. Yes.

Q. What did you do with it?

A. I tore it up.

Q. You never turned in any of them to any of your fellow employees, did you?

A. No, sir.

Q. How long ago was that was Monahan was giving out circulars?

A. This spring a year ago.

Q. March of 1937?

A. March or April or something like that.

5085 Q. Did Mr. Holtzclaw during that speech say that if any raises were to be given they would be effective as of July 1, 1937?

Trial Examiner FORT. Do you mean June 1, 1937?

Mr. HILTON. I mean June 1, 1937.

5086 The WITNESS. He made a statement—although I have forgotten just exactly how it was—that "if you will organize as a body and submit your demands to the company, if the company feels favorable, then we can give you your demands, no matter what time they will happen, they will be based as of June 1st."

By Mr. HILTON:

Q. Then, after the speech the 25 or 30 men remained and had a meeting, didn't they?

A. Yes, sir.

Q. And the purpose of holding that meeting was to start some kind of an organization?

A. I imagine it was, because they all got up there together and started talking and asked me to take hold of it.

Q. Were any of the men who asked you to take hold of this organization men who had previously asked you about your attitude toward outside organizations?

A. No, sir.

Q. You don't even recall any of the men who requested you to act as Chairman?

A. No; I will tell you the reason why. There were men from all over the company, men I had perhaps seen but whose names I didn't know, or perhaps men I had never seen and didn't even know they worked for the company.

Q. When you say men from all over the company you mean from all over the Richmond district?

5087 A. Yes, sir.

Q. And I believe you stated that meeting lasted about an hour?

A. Yes, sir.

Q. You didn't vote on whether or not you would have any outside affiliation in the event that you formed this organization at that meeting, did you?

A. No, sir.

Q. But I believe you stated it was your opinion that this was to be an inside organization and not have any affiliation at all?

A. That was my feeling personally.

Q. Did any of the other representatives express that feeling to you?

A. In that little meeting after Mr. Holtzclaw's meeting some two or three made the statement that "We didn't want an outside organization."

Q. Was that discussed at all by the representatives at that meeting?

A. No, sir. Everybody was talking at once.

Q. Did you agree at this meeting on May 24th to hold another meeting on June 1, 1937?

A. No, sir.

Q. You did agree that you would hold a meeting at some later date, didn't you?

A. No; we didn't even agree to that. Nothing was start-
5088 ed for another meeting until after I held my two meetings two days afterwards.

Q. Then nothing else of any importance really happened at that meeting on the 24th other than the fact that you were elected Chairman and you had discussions with some of the men about forming an inside organization?

A. Yes, sir.

Q. Then did you report to your group the next day what had occurred at this meeting on the 24th?

A. The second day.

Q. And the second day?

A. Yes.

Q. That would be May 26th. Is that right?

A. Yes, sir.

Q. At that time you asked permission for the use of the Virginia Electric and Power Company auditorium?

A. I did.

Q. For the purpose of explaining to the employees what had happened on May 24th?

A. I did.

Q. And I believe you posted a notice that these meetings would be held?

A. I did.

Q. When were the meetings held?

A. They were held on the 26th, two days after Mr. Holtzclaw's meeting.

5089 Q. Did you post the notice on the company bulletin board?

A. I did.
Q. Was there any objection ever made to your posting it?
A. None in the world. I asked permission.
Q. How long did the notice remain posted?
A. Until the day of the meeting, and I removed them myself.
Q. Were they up there the full 24 hours before the meeting?
A. Yes.
Q. Where did you have those notices prepared?
A. At my home. I wrote them up myself.
Q. Did you use company stationery?
A. No, sir; my own stationery and my own typewriter.
Q. Then you had a meeting on May 29th at eight o'clock for the line department, didn't you?
A. Yes.
Q. And I believe you stated that you explained the act and then gave a talk as to what has occurred at the speech by Mr. Holtzclaw. Is that right?
A. I explained as best I could the Wagner Act. I had never seen a copy of it and I just took what Mr. Holtzclaw had told us and delivered it to the people the morning after, or the second morning after.
Q. The principal part of that speech, so far as the employees were concerned, was section 7 of the Act, which provided that they had the right to form, join, or assist any labor organi-
5090 zation?
A. Yes, sir.
Q. And you told the employees that at the meeting on May 26th, didn't you?
A. Yes.
Q. How many were present at that meeting at eight o'clock?
A. I suppose possibly 40 or 45 people.
Q. Were any questions asked you in regard to the act?
A. Well, every now and then somebody would bob up and state something who didn't exactly understand certain phrases of it and I would tell it over again.
Q. How long did the meeting last?
A. About an hour.
Q. Did you tell the men at that meeting of the line department that if they formed an inside organization that Mr. Holtzclaw had promised them an increase in pay effective as of June 1, 1937?
A. No, sir.
5091 Q. Did you make any mention of those increases as Mr. Holtzclaw had stated in his speech on the 24th?
A. I said, "I believe that if you all would go ahead and form an organization with a majority of the men members and take up

a fair petition to the company, that the company will meet you half way."

Q. And you based that on what Mr. Holtzclaw stated?

A. And I said, "I believe if you go to the company in the right way, and they will give you something, it will be based from June 1st."

Q. And you based that, of course, on what Mr. Holtzclaw had stated during his speech on the 24th, did you not?

A. Yes, sir.

Q. Now, did you make the same explanation to the meeting of the office employees at 9 o'clock?

A. Practically the same talk.

5092 Q. Now, at either of those meetings did the employees say they wanted to started an inside organization?

A. Well, you know how a meeting of that sort is, 45 or 50 people, somebody is going to say, "I think the best way to do it is to start something."

Q. And was there any objection to that?

A. No; no objection; no, sir.

Q. And about how long did those meetings last?

A. About an hour.

Q. Each one lasted about an hour?

A. Yes, sir.

Q. At what time do you report to work or were you reporting to work?

A. I report to work at 8:30, but I knew I had this meeting the next morning at 8 o'clock, so I got in a quarter to eight.

Q. At what time does the line department report for duty?

A. 7:30, I think.

Q. And were the linemen held over so you could make this talk?

A. At my request.

Q. To whom did you make that request?

A. The superintendent of installation, I believe. Mr. Walke, I believe it was.

Q. Did you have any trouble in convincing Mr. Walke to hold the linemen in from 7:30 to 8 o'clock so they could

5093 hear this talk?

A. I asked Mr. Walke: I said, "I would like to hold a meeting tomorrow morning so I could deliver this message to the linemen. I would like to make this talk at 8 o'clock. Would it be all right to hold the men in so I could give them this information, those that did not attend Mr. Holtzclaw's meeting?" He says, "I think so."

5094 Q. So you held the men in from 7:30 until approximately 9 o'clock?

A. Eight o'clock.

Q. I mean then they attended that meeting, and that lasted about an hour, didn't it?

A. About an hour; 7:30 to 8:30.

Q. 7:30 to 8:30?

A. No; 8 to 9.

Q. 8 to 9?

A. Yes, sir.

Q. So the linemen did not get out until approximately 9 o'clock that morning, did they?

A. No.

Q. Had you ever done anything like that before?

A. Not in a union.

Q. Now, the meeting at 9 o'clock, did those present at that meeting say they were in favor of starting any independent organization?

A. Just like the first meeting. Somebody jumped up and said it would be a good idea if we would form an organization of our own.

Q. Did you tell them what steps, if any, you would take to form such an organization?

A. I told them; I said, "Now, men, the best way to do it is to go ahead and appoint a committee. All of you can't
5095 attend the meetings. Appoint a committee, men that you know can transact your business for you, and see if we can whip this thing into an organization for our own benefit."

Q. And did you at that time want to whip it into an organization in a hurry so you could get your bargaining committee set up, and adjust these wages, and so forth?

A. I thought the quicker we went through with it the better off we would be.

5098 Q. Now, did you have permission to use the V. E. P. auditorium on the evening of June the 1st?

A. I was told that we could use it up until we began to organize. Mr. Walke said, "The Government does not let us assist you in any way, shape, form, or fashion. I do not mind you using the auditorium, but when you start organizing you will have to stop it."

Q. Who told you that?

A. Mr. Walke.

5104 Examination by Trial Examiner FORT:

Q. You spoke of having met with some difficulty in obtaining the use of that hall for the purpose of those meetings in response to a question by Mr. White. What was the difficulty that you had?

A. The way it was put to me, "Well, you know our position in regard to the Wagner Act; it doesn't let us assist or help finance or help you in any way." I said, "Well, listen, I am not after forming a union, or anything like that. Now, I want to deliver to the balance of the people Mr. Holtzclaw's address to us last night. Only a few of us were up there and I would like to bring back—being a committeeman—bring back to my people what I understood Mr. Holtzclaw to say."

5105 Q. Now, after this speech of May 24th that Mr. Holtzclaw made, I believe you said that you stayed there for about an hour.

A. Yes, sir.

Q. In that time was there a pretty general exchange of views?

A. Yes, sir.

Q. Not in the form of discussion?

A. Yes, sir.

Q. Among the 25 or 50 men there?

A. Yes, sir.

Q. Did you state your position very plainly?

A. No; I didn't make any statement that night, except "Boys, I feel it would be a good idea for you to form an organization. I believe if we had one we could go further."

Q. Did you not indicate your abhorrence or dislike for an outside organization?

A. I might have done it; yes, sir.

Q. Is there any doubt in your mind that you did?

5106 A. I wouldn't be surprised if I did.

Q. Was it towards the end of the hour that you were elected as chairman?

A. Right after Mr. Holtzclaw and his group walked out, possibly 25 or 30, like I say, got to talking, and I was in that group and I talked, too. I can't keep my mouth shut, either, and I talked, too, and then somebody said, "Well, why don't you take this job as chairman?" I said, "No; let somebody else take it." "No," he said, "we want a man just like you, because you will go ahead." "Well," I said, "if you all want me there is nothing to do but go ahead and do the best I can."

Q. Was there any suggestion made to you that you ought not to take the position that you had taken?

A. No; nobody objected—nobody objected but myself.

5107 Q. I do not mean the position of chairman, but I mean the position as to an outside union.

A. No, sir.

Q. Nobody had objected to that?

A. No, sir.

Q. The sentiment was unanimous——

A. The sentiment was unanimous with me.

Q. Wait until I finish the questions and you will understand them better. They were unanimous that you did not want an outside union?

A. Yes, sir.

5116 McCAMIE D. HOUGH, resumed the witness stand and, having been previously sworn, testified on behalf of the Intervener as follows:

Direct examination resumed by Mr. WHITE:

Q. Mr. Hough, before the recess I think he had just been talking a trip to Richmond with Mr. Elliott and Mr. Ruett to hear Mr. Holtzclaw's address, and I believe you stated that after Mr. Holtzclaw finished his address all of the three of you left the auditorium?

A. That is correct.

Q. And I believe you stated that you went downstairs and talked to a few of the other people who had attended that meeting?

A. That is right.

Q. And then I believe you came on home. Is that right?

A. Yes, sir.

Q. You were driving together in an automobile? Isn't that true?

A. That is right.

Q. Do you remember having any conversation with each other about Mr. Holtzclaw's speech on the way back from Richmond to Norfolk?

A. So far as that is concerned, that was discussed all of the way home. We talked quite a bit.

Q. What was the line of discussion?

5117 A. The main thing I recall was as to some way to get together.

Q. Was there any discussion about whether the company would bargain with the A. F. of L. or the C. I. O. on this trip back from Richmond to Norfolk?

A. I think it was discussed and we decided it didn't make any difference how we wanted to organize, independently, or C. I. O., or A. F. of L., or either way.

Q. Mr. Reutt, on page 170 of the record, stated that in your discussion that you all agreed that "The company would not bargain or accept any outside organization; that is, the A. F. of L. or the C. I. O., as we addressed then at that time." Do you remember a discussion along that line?

A. I do not.

Q. In talking to the employees outside of the building in Richmond as to Mr. Holtzclaw's speech did anybody there express an opinion that the company would not bargain with the A. F. of L. or the C. I. O.?

A. Not that I recall; no, sir.

Q. Were you with Mr. Elliott all of the time?

A. I was.

Q. Did you hear every conversation that he had from the time he left that meeting until you all started back?

5118 Mr. Elliott testified on page 468 of the record in reference to talking to the employees outside of the company building on the night of May 24th in Richmond, as follows: "There was quite a number there who said that if we wanted to get a raise that we better not join the C. I. O. or the A. F. of L.; that Mr. Holtzclaw had made statements which we could read between the lines and said that he wanted us to form a company union; and that they wanted to get this thing over as quickly as possible so that we could get this raise that was anticipated on June 1st." Do you remember anybody's saying that to you or to Mr. Elliott at that time?

A. I do not.

Q. Was there anything like that that said to the effect that the company would not bargain with the A. F. of L., or the C. I. O.?

A. No, sir; there was not.

Q. Was there any discussion on the trip home relative to organizing a system-wide organization?

A. There was some discussion about this, I think.

Q. What did you consider? Was it organizing all employees of the company, or just the transportation employees, or what?

A. We were considering the transportation department

5119 more or less.

Q. In other words you were considering transportation employees all over the system?

A. That was our talk; yes, sir.

Q. I believe you stated you had gone by the car barn and found that there was no organization at that time among the employees in Richmond? Is that right?

A. That is right.

5127 Mr. HILTON. Mr. White, I think we can stipulate on Mr. Elliott's E. A. C. plan.

Mr. WHITE. I think so. It is stipulated that the testimony of this witness relative to the proceedings of the meeting of June first will be the same as that of Mr. Faust and Mr. Tatem.

5128 Q. Mr. Hough, I believe you went to the meeting at Petersburg on June third, didn't you?

A. I did.

Mr. WHITE. I am willing to stipulate that meeting, too.

Mr. HILTON. All right.

Mr. WHITE. It is stipulated that the testimony of this witness with respect to the meeting at Petersburg on June 3, 1937, will be the same as that of D. M. Tatem and W. O. Morris.

Mr. HILTON. That is the meeting of the Norfolk Committee with the Richmond Committee in Petersburg?

Mr. WHITE. That is right.

By Mr. WHITE:

Q. After you came back from Petersburg on June 3rd what was the next organization activity among the transportation employees?

5129 A. We had a meeting on the 9th. That was our next meeting, Mr. White, of the transportation department. I attended a meeting on June 7th, I think, in the Virginia Electric and Power Company Building.

Q. You attended that meeting?

A. Yes, sir.

Mr. WHITE. I am willing to stipulate that one too.

Mr. HILTON. All right.

Mr. WHITE. It is stipulated the testimony of this witness with respect to the meeting of June 7, 1937, at the V. E. & P. Company Auditorium will be the same as that of the witness, D. M. Tatem.

Mr. HILTON. Just generally, what was that meeting?

Mr. WHITE. That was the one at which Tatem was elected chairman of the Norfolk Steering Committee.

5130 Now, we come to the meeting of June the 9th. Did you attend that meeting?

A. I did, the morning meeting.

Q. Do you remember Mr. Underwood appearing at that meeting?

A. I do.

Q. Do you recall what Mr. Underwood said to the meeting?

A. Some things I do.

Q. Did he say anything about the fact that the company was not going to deal with the C. I. O. or the A. F. of L.?

A. He did not.

Q. Did he say anything about the fact that he knew the company favored an organization that he said he represented?

A. He did not.

Q. Did he do anything except tell you what had taken place along the line of organization activities among the employees in Richmond?

5131 A. That is practically all he did. He said he thought it would be best to get together.

Q. Was any motion made or remark made that he be thrown out of the meeting?

A. I never heard it.

Q. What action was taken at that meeting after Mr. Underwood left?

A. Well, there was quite a bit of discussion among the men. Some of the men did not seem to like it. They wanted to form their own organization—the transportation department alone.

Q. Go back just a minute to this meeting in Petersburg. At page 493 of the record Mr. Elliott testified that Mr. Bishop insisted that he go to Petersburg. Did Mr. Elliott ever tell you that that is the reason he was going to Petersburg?

A. He did not.

Q. Did he ever assign any reason for going to Petersburg?

A. Nothing, only he just—he told me he had been notified to be at a meeting on the 3rd in Petersburg.

Q. Did he mention Mr. Bishop's name or any other official's name in connection with that matter?

A. No, sir; he did not.

Q. Now, I believe you stated that all signed up E. A. C. cards. How long did that sign-up continue?

A. Application blanks, you mean?

Q. Yes.

5132 A. I do not think we signed more cards after the 11th, I believe it was, after the 11th.

Q. After the 11th of June?

A. I believe that is right.

Q. Did you all make any plans with respect to what you were going to do with the E. A. C. while you were signing up these cards?

A. We were trying to find out who had the most votes. I had most on the streetcar side; he had most on the bus side. Mr. Reutt and Mr. King put us in the lead. I talked to Mr. Elliott on Saturday, the 12th, I believe it was, of June. He insisted we go to Richmond and meet with some of the transportation men in Richmond and try to call a meeting with them to see if we could get the men to organize with us. He agreed very frankly to do this. It was on the 12th of June. We were to meet on Monday, June the 14th. As we only had 115 men signed up and did not have the majority, we expected to try to get a majority of the men on 18th Street to sign up. On the 14th I went down to the carbarn at 9:30 Monday morning and waited about two hours for Mr. Elliott. He did not show up.

Q. You did not have any meeting, then?

A. We did not have any meeting at all. I went back to
5133 my work, and when I got off a quarter past 7 I called his home. His wife answered—I suppose she was—a lady answered and said he was in Richmond. She did not know why. I did not ask her why. I did not see any more of him for about three days after that. When I saw him he told me he went to see Mr. Holtzclaw.

Q. In other words, he did not meet you on June the 15th?

A. He did not; no, sir.

Q. In the meantime had any action been taken at the meeting of June 9th giving you 30 days in which to get some action or else quit?

A. How is that?

Q. Was any action taken at the meeting on June 9th at the carbarn giving the committee 30 days either to get some action or quit?

A. There was a suggestion made by Mr. Elliott. He did say something to the effect that we would be on trial in the E. A. C. for 30 days, and if it did not amount to anything we would try something else.

Q. Did he state you were going to try the C. I. O. or A. F. of L.?

A. He did not say. He said we would try some other way of bargaining.

5135 Q. As a matter of fact, Mr. Hough, wasn't the E. A. C. about washed up because you did not have a majority?

A. Not practically; it was all washed up.

5137 Q. Did you go to the meeting at the Blair Junior High School?

A. I did.

Q. Did you hear Mr. Elliott's surprise there?

A. I did. It was quite a surprise.

Q. Were you surprised?

A. I was.

Mr. WHITE. I will stipulate the rest of the Blair Junior High School meeting, if you want me to. It is stipulated that the testimony of this witness relative to the proceeding at the Blair Junior High School on the night of June 22, 1937, will be
5138 the same as that of the witness W. W. Faust.

Q. Mr. Hough, after Mr. Elliott made his announcement at the Blair Junior High School did you talk to any of the other employees in the transportation department about it?

A. Quite a few; yes, sir.

Q. Did that cause a sensation out there?

A. Very much.

Q. What was the attitude of the remaining members of the committee after Mr. Elliott's announcement that night?

A. Well, they had a very poor opinion of Mr. Elliott. It seemed so, anyway.

5142 Q. I believe they held an election to select nominees on
5143 July 2nd, and a second election to elect representatives from the nominees on July 12, 1937.

A. That is right.

Q. Do you know where the voting was done?

A. Across the street, outside the Crystal Cafe.

Q. Where were most of the members signed up of the I. O. E. in the transportation department—at which point?

A. Most of them around this cafe, across the street—the majority of them.

Q. That was a kind of headquarters?

A. It was a kind of headquarters; yes, sir.

Mr. WHITE. It is stipulated that the testimony of this witness in respect to the meeting of the Norfolk interdepartmental committee on July 13, 1937, at which members of the general committee were elected, and the minutes of the meetings at the Nansemond Hotel on July 17th and 18th, 1937, will be the same, in effect, as the testimony of the witness W. W. Faust.

5144 Q. Were you a member of the general committee, too?

A. That is right; yes, sir.

Q. And as such, you helped negotiate the contract between the I. O. E. and the V. E. & P. Co.?

A. I did.

Mr. WHITE. It is stipulated that the testimony of this witness with respect to the negotiation of the contract between the I. O. E. and the V. E. & P. Co. will be the same, substantially, as that of the witnesses W. W. Faust and D. M. Tatem, and T. Norman Jones.

By Mr. WHITE:

Q. Now Mr. Hough, after you had finished negotiating the contract on August 1st, 1937, I believe it has been stated
5145 that you took it back to your voting sections to have it approved; is that right?

A. Yes; that is right.

Q. What form did this approval take?

A. We called two meetings on Monday, I believe it was, the second of August. I believe it was Monday, the 2nd. We called two meetings, and we had only a few members present at each meeting, and we were not satisfied with the vote taken. You might say they all voted to accept the contract, but we didn't have a ma-

jority at our meetings; so in an effort to show the majority there was a petition signed to that effect.

Q. All through the transportation department in Norfolk?

A. That is right.

Q. When were those petitions signed up, Mr. Hough?

A. Between the second and fifth of August.

Q. Before you went up to sign that contract?

A. Yes.

Q. With the company?

A. That is right.

Q. I hand you four petitions, and I will ask you if these are the petitions that you referred to [handing documents to the witness]?

A. They are.

5147 Trial Examiner FORT. All four documents just listed will be received in evidence.

(The documents referred to were marked "Intervener's Exhibits 45, 46, 47, and 48," and were received in evidence.)

By Mr. WHITE:

Q. Now, Mr. Hough, you say these petitions, or these papers were all signed before you signed the contract between the Virginia Electric & Power Company and the I. O. E.; is that right?

A. Yes, sir; they were.

Q. And constituted approval by more than the majority of each of these voting sections in the transportation department in Norfolk; is not that right?

A. That is right; yes, sir. They did.

5154 Mr. WHITE. Mr. Examiner, I omitted to offer in evidence a paper headed "Trackmen," bearing above it some writing that is on Intervener's Exhibit 45, 46, 47, and 48, which were already introduced in evidence. This paper is signed by various men, beginning with Albert Tucker. We ask that it be received in evidence as Intervener's Exhibit No. 49.

Trial Examiner FORT. I assume there is no objection?

Mr. HILTON. No objection.

Trial Examiner FORT. It will be received.

(The document above referred to was received in evidence and marked "Intervener's Exhibit No. 49.")

5208 Mr. WHITE. It is stipulated that the witness H. C. Roundtree, who is present in court, if called to the stand, would testify as follows:

That he is an employee of the Virginia Electric & Power Company, being a bus driver in Portsmouth; that on May the 27th or 28th, in any event on a Friday following Mr. Throck'orton's address of May 24th, he came to Norfolk and saw Mr. Elliott and

asked him to come over to explain to a meeting of the bus operators in Portsmouth his plan of organization; that Mr. Elliott did come the Friday following and at that meeting did explain his plan of organization.

At that meeting the Portsmouth bus drivers voted to form an independent organization but signed no applications or cards; that the understanding of the meeting was that they would join an organization along the lines explained by Mr. Elliott; that the witness was elected as the representative of the Portsmouth group and that he did attend the meeting of June the 1st, 1937, at the Virginia Electric & Power Company auditorium, in Norfolk, Virginia, where Mr. Elliott explained his plan of organization; that after that night the witness was no longer in accord with Mr. Elliott's plan, and that he continued to act with the Norfolk committee and attended the meetings held on June 7, June 11, June 16, and June 22 at the Blair Junior High School, all in Norfolk; that his testimony as to the proceedings at these meetings would
5209 be the same as the testimony of D. M. Tatem; that he himself acted as an inspector of elections for the elections held in Portsmouth by the bus drivers on July 2nd and on July 12th, having been designated for this purpose by the steering committee; that the elections were held in a restaurant across the street from the car barns and on the street and not on company property; that W. W. Powers was elected as a representative of the bus operators, who voted in the same voting section as the Norfolk bus operators; that the only meeting held on company property by the Portsmouth bus operators was the meeting held in the Y. M. C. A. at Portsmouth, which was addressed by Mr. Elliott; and that at that meeting he was elected as a representative of the Portsmouth bus operators and continuously served on the steering committee until July 13, 1937, when the regularly elected representative took office and the steering committee was dissolved.

5236 Mr. WHITE. It is stipulated that the witness Carl D. Boyce, who is hear present, if called to the stand to testify, would testify regarding the action of the grievance committee and the division committee in substantially the same manner as the witness A. C. Cartledge. It is stipulated that the witness
5237 B. O. Parke, here present, if called to the stand, would testify as follows:

That he attended the meeting of Mr. Throckmorton on May the 24th, 1937, and that his testimony with regard to that meeting would be the same as that of W. W. Faust; that he attended the meeting of June 1st, 1937, in the Virginia Electric & Power Company auditorium, and that his testimony as to that meeting would be the same as the witness W. W. Faust, and the witness D. M. Tatem; that he was elected a representative of his group at a

meeting held in the company Y. M. C. A. on May the 26th or 27th, 1937; that he did attend a meeting on June 2nd, 1937, at the Virginia Electric & Power Company Y. M. C. A., which was attended by the employees in the shop, to which meeting Mr. Elliott explained his plan. There was no vote taken on that particular plan, but a vote was taken as to the type of affiliation which the shop men desired, with the result that A. F. of L. received two votes, C. I. O. received two votes, and Independent Organization received 109 votes; that on the 15th day of June, 1937, the witness resigned from the committee and A. C. Cartledge was elected in his place.

It is stipulated that in the other departments of the company, not already covered by evidence or by stipulation, meetings were called and representatives elected to go to the meeting in Richmond and in Norfolk held on the night of May the 24th, 1937, in
5238 substantially the same manner as the meeting which had been testified to at the Cove Street garage in the city of Norfolk.

It is further stipulated that in every such case the representatives elected reported back to meetings of their groups, which were held on company property. It is further stipulated that at such meetings representatives were elected by these groups, who later joined with other like representatives to form a steering committee, which functioned up until July 13, 1937. It is further stipulated that the elections of July 2nd and July 12th, 1937, were held in these departments in substantially the same manner as the elections in the other departments, to which there is testimony of witnesses in the record. It is further stipulated that on July 13 the steering committees in Richmond and Norfolk were discharged and the duly elected representatives of the I. O. E. took charge of the organization. It is further stipulated that there were no meetings on company property or during working hours by members or representatives of the I. O. E. subsequent to June 14, 1937. It is stipulated that the witness L. D. Edwards, of Richmond, Virginia, who is here present in court, if called as a witness, would testify as follows: That early in May 1937, he was the
5239 spokesman of a group of eight men who called on Mr. Avent, who was assistant superintendent of transportation in Richmond, and asked for an increase in wages and improvement in working conditions.

Mr. Avent told this group that their request as to improvement in working conditions would be considered but that their request for an increase in wages would not be considered. Mr. Edwards was one of the representatives who attended the meeting addressed by Mr. Holtzclaw on May 24, 1937, having been elected at a meeting which was called that day at the car barns in Richmond during working hours.

5240 The report was made by Mr. Edwards and the other representatives to a meeting at the barns on May 25, 1937, and at that time it was voted to form an independent organization, and a committee was selected to find quarters for the group to meet. These quarters were found at 611 West Main Street, Richmond, Virginia, and all further meetings of the employees in the transportation department, excluding the shops, held their meetings at this address from that time on. No further meetings were held on company property. These quarters were kept at least for three months. A representative from this group met with the Richmond steering committee at every meeting, and the transportation employees affiliated with the I. O. E. immediately after the meeting of June 15, 1937, which date, it is stipulated, was June 18, 1937, by a vote which was taken by the transportation members at their meeting hall on Main Street. The individuals signed membership cards at the headquarters and in the restaurant across the street from the car barns. The expenses of the hall and other expenses incurred in connection with the transportation group were drawn out of a fund entirely contributed by the men themselves.

5244 McCAMIE D. HOUGH resumed the witness stand and, having been first duly sworn, testified on behalf of the intervener as follows:

Cross-examination by Mr. HILTON:

5279 Q. So far as you know, did anything more come out of the E. A. C. after this meeting of June 9th at the car barns?

A. I don't think so, except Mr. Elliott was around the car barns on several occasions trying to collect dollars and dues. Men had signed the petition but had not paid their dollars in yet, and he was around there on several occasions trying to collect that money.

Q. On June 16th I believe you stated Mr. Elliott said the Transportation group was going into the I. O. E. or into the Independent Organization that would be formed?

A. He said they preferred to; yes.

Q. Then, on June 22, about noon, Mr. Elliott told you that he had a surprise for you?

A. He said he had a surprise for everyone.

Q. For everyone?

A. In the Transportation Department, I believe he said.

5283 Q. Mr. Hough, you stated that after this agreement had been reached between the I. O. E. and the Virginia Electric and Power Company that he took that agreement to the Transportation Department and had them sign authorizations?

A. I did. We came back to Norfolk on the night of the 1st. I called two meetings on August 2nd, and we had only a few men present at the two meetings and did not have a majority, and we decided it would be best to have some kind of authorization
5284 or petitions signed to prove we had a majority in favor of the contract.

Q. How did you call those meetings?

A. We posted a notice.

Q. Did you tell them the purpose of holding the meeting?

A. We did.

Q. Despite the fact that you posted a notice to the effect that an agreement was to be voted upon by the men affecting their hours, wages, and general working conditions, you couldn't even get a majority of the men to attend?

A. Working conditions are bad, and they tried to get a majority.

Q. Even though you had some vital matter which pertained to their getting an increase in pay which would be effective as of June 1st?

A. This meeting was called on Monday. We had more runs on Saturdays and Sundays than on any other day, more swing runs and two-part runs, and quite a few of the men were working. So it was impossible to get a majority at the meeting.

Q. Then you decided to have these written authorizations by the men empowering the committee to adopt that agreement on behalf of the transportation department in Norfolk?

A. We felt like it would be advisable to do that.

Q. And who obtained the signatures on the authorizations?

A. As I recall, W. W. Powers, the bus representative, and
5285 myself got most of them.

Q. Did you have those signed on company time?

A. I was on duty myself. Everybody that signed it was on duty.

Q. How long did it take you to get those names?

A. All day, I think. It was practically all day on Tuesday, and we got a few on Wednesday, I think. It was Tuesday and Wednesday.

5295 By Trial Examiner FORT:

Q. Is the pay schedule in Norfolk as it is in Richmond?

A. Car and bus operators?

Q. Yes.

A. Yes, sir.

Q. Are the working hours the same?

A. Practically the same, I think; yes, sir.

Q. What difference is there?

A. Well, as far as I know, they are the same. There might be some difference in runs. The day's work is practically the same.

Q. Are there any other street cars or buses operated by the company besides in Norfolk and Richmond?

A. Petersburg and Portsmouth.

Q. How are the pay schedules there?

A. The same thing. Petersburg and Richmond is one division, and Portsmouth and Norfolk is another division. Two divisions is all they have.

Q. And the pay is the same in all places?

A. Yes, sir.

Q. How long has it been that way?

A. As far as I know, the pay has been the same all the time
5296 in the last eight years. I have been with the company eight years and it has been the same.

5362 Mr. Moore. It is also stipulated that the following affidavit of Paul T. Dewick, which was furnished to Mr. Roman Miller, counsel in this case, on June 16, 1938, be placed in the record at this point with the same force and effect as if the witness, Paul T. Dewick were called to the stand and testified to the facts here stated, and that that be spread in the record.

Trial Examiner Fort. It will be spread in the record.

(The affidavit referred to is as follows:)

"I am car and bus dispatcher at the 18th Street Car Barn of Virginia Electric and Power Company, Norfolk, Virginia. The Dispatchers' Office is located at the northwest corner of the ground floor of the Company's Office Building which fronts on 18th Street. This space is not walled off but there is a wall on the north end and on the west side, with a counter about breast high running from the west wall eastwardly to an aisle and then northwardly along the aisle to the north end of the building. This aisle is about five feet or six feet wide, and across the aisle from the Dispatchers' Office is the Cashier's Office. The space south of
5363 the Dispatchers' counter and Cashier's cage is a large open space which the bus and car operators use for lounging and also for being called for their runs.

"I recall that a few days before Everard M. Mann was discharged, Mr. Edward A. Bishop, the Superintendent of Transportation, was sitting in the Dispatchers' Office reading the paper about two o'clock in the afternoon and there were a number of the car and bus operators standing in the space outside of the Dispatchers' Office.

"J. E. Rawls, bus operator, was standing on the outside of my counter and I was talking to him. Everard M. Mann came in and as nearly as I can recall, he asked 'If that guy Bishop had been around.' This was said in a loud tone and angry manner. I replied, 'If you are referring to Mr. Bishop, he is sitting right

here,' and pointed to Mr. Bishop. Mann looked at Mr. Bishop and then turned and walked away. Mann's remark was made so that all of the operators could hear it as well as myself. The operators who were present were talking with each other, but when Mann made this inquiry they all immediately stopped and you could have heard a pin drop. The men looked astonished.

"About a couple of days later Mr. Bishop gave me instructions to sign Mann up to come to see him, and later I learned of Mann's discharge.

"Just a few days before this occurrence, operator Mann
5364 had missed out on a run which had been assigned to him and when he reported to the Dispatchers' Office he said that he had fallen asleep in a moving-picture show. I assigned him to relieve different operators when they went to supper. He refused the assignment, saying, 'To hell with it,' that he was going to Ocean View. I intended to report this to Mr. Bishop, and I thought I had done so, but it may have slipped my mind.

"I have worked under Mr. Bishop for over twenty years. I worked as car operator in Portsmouth when he was Superintendent there, and about a year after he was transferred to Norfolk I came over to Norfolk, also. Mr. Bishop has always been kind to and considerate of the men under him, and I have never before heard of him being spoken of disrespectfully either in or out of his presence.

"There were a number of operators around, but at this time I recall only operators J. B. Walker, J. E. Rawls, and C. B. Bratten."

Mr. MOORE. Likewise, it is stipulated that the following three affidavits being on the same matters referred to in Mr. Dewick's affidavit be filed with the same force and effect that as if these three witnesses were on the stand and so testified and were present in court. They are J. E. Rawls, J. B. Walker, and C. B. Bratten.

(The affidavit of J. E. Rawls is as follows:)

5365 "I am bus operator for Virginia Electric and Power Company at Norfolk.

"A few days before I learned that Operator Everard M. Mann was discharged, about two o'clock in the afternoon, I was standing at the Dispatchers' Counter talking with Mr. Dewick, who was the Dispatcher on duty, when Operator Mann came in, and in a loud and angry tone asked Mr. Dewick, 'Is that guy Bishop around?' Mr. Mann's manner indicated that he was angry about something or other. Mr. Dewick replied, 'If you are talking about Mr. Bishop, he is sitting right here.' There was a number of operators standing around talking but when this occurred everybody ceased speaking and I think you could have heard a

pin drop, almost. I walked away towards the Cashier's cage because I expected Mr. Bishop to take some action right then, but he did not and Mann turned around and left them, offering no apology at all.

"I have worked under Mr. Bishop almost five years and have always found him kindly to me and the other men and considerate of us, and this is the first time that I have ever heard him
5366 spoken of disrespectfully either in his presence or behind his back, and I walked away because I was sort of shocked by what Mann said. A number of men (myself included) call him at times Captain Ed, but this is not a form of derision but more a term of respect of affection."

(The affidavit of J. B. Walker is as follows:)

"I am bus operator for Virginia Electric and Power Company at Norfolk. About two o'clock in the afternoon a few days before operator Everard M. Mann was discharged I was standing near the Dispatchers' desk at 18th Street near the west wall of the room. There were a number of operators standing around talking. Operator Mann came in and walked up to Mr. Dewick, who was the dispatcher on duty, and asked him in a loud and angry tone, 'Where is that guy Bishop,' those being the words, as I remember them now. When he said this everybody stopped speaking and the room was silent, and Mr. Dewick replied to him, 'If you are talking about Mr. Bishop, there he is sitting here.' Mann then turned and walked out of the building without offering to make any apology at all.

"I have worked under Mr. Bishop for more than two
5367 years, and I have always found him kind and considerate of me and the other men and this is the first time that I have ever heard any of the men speak to or of him disrespectfully. A number of the men (myself included) call him at times Captain Ed or Captain Bishop, but this is not a term of derision but one more of respect and affection."

(The following is the affidavit of C. B. Bratten:)

"I am bus operator for Virginia Electric and Power Company, at Norfolk, Virginia. A few days before operator Everard M. Mann was discharged, about two o'clock in the afternoon (I do not recall the date), I walked into the room where the Dispatchers' Office is located, almost immediately behind operator Mann. Mann walked up to the Dispatchers' counter and I heard him say in a loud and boisterous tone, 'Is that guy Bishop around?' those being the words as nearly as I can now recall. Mr. Dewick was the Dispatcher on duty and he replied, 'If you are talking about Mr. Bishop, he is sitting over there.' The man's tone was insulting, and I turned and walked away to the door leading out of the building. There were a number of operators

5368 standing around talking to each other when this occurred. When Mann spoke these words their conversation stopped, and there was utter silence. Operator Mann when he received Mr. Dewick's reply sort of hung his head and walked away. He did not at that time offer any apology to Mr. Bishop. I walked away because I expected Mr. Bishop to take some action immediately, and I did not want to be present. I felt very badly about this myself because I have worked under Mr. Bishop for over ten years, and I always found him to be very kind to his men and considerate of them, and the men have always been respectful to him. I had never before heard any men speak disrespectfully to Mr. Bishop or of him in his absence. A number of men (myself included) call him at times Captain Ed or Captain, but this is not a form of derision but more of affection and respect.

"I later learned that Mr. Mann had been dismissed from the service of the Company and I had expected this would happen because I could not see how operator Mann, or anyone else, could get away with conduct so disrespectful to Mr. Bishop."

Mr. MOORE. It is also stipulated that two affidavits of the witness W. T. Crafton, who has heretofore testified in this case, we spread on the record with the same force and effect as if Mr. Crafton, who is here present, had taken the stand and testified to the matters here involved.

5371 "I (W. T. Crafton) am Superintendent of Distribution, Electric Department, Norfolk District of Virginia Electric and Power Company.

"I was out of the City when witness Paul D. Brown testified at the hearing before the National Labor Relations Board on the complaint against the company, but I understand that he testified that at his request I had the men brought in at 4:30 o'clock P. M. on May 26, 1937. I had forgotten about this incident until I was informed of Brown's testimony. I recall that Brown came to me and told me that the men desired to hold a meeting about 4:30 o'clock in the afternoon of May 26th, and made the request that none of the men be required to work overtime that day so that they could get into the Cove Street Garage at the usual quitting time. As I recall it, I had instructions issued that the men be not required to work overtime on that day. I was not told where the meeting was to be held, and I left at my usual leaving time, which is 4:30 o'clock, and I did not know until later that that meeting was held in the garage. I was not asked, and I did not give any permission for the use of the Company's property for a meeting place. I know that if the men held this meeting they did it on their own time and were not paid for any time after 4:30 o'clock P. M. that afternoon. Brown told me that the men themselves wanted to come in for

the meeting: it was not a matter of my ordering the men brought in."

5376 JESSE WHITE COLE, a witness called for and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MOORE:

Q. Will you please state your name?

A. Jesse White Cole.

Q. Mr. Cole, you are assistant superintendent of Equipment of the Transportation Department here in Norfolk of the Virginia Electric and Power Company, are you not?

A. Yes, sir.

Q. That is commonly known as the Transportation Shops?

A. Yes, sir.

Q. It appears that a witness called by the Board by the name of King, who said he worked in your department, testified that on some date, which was either in May or June, according to the record, you had a talk with a group of employees over in the bus garage and that you stated that you could not talk but just so much about a question that was then under discussion about unions, that you did not want to go to Atlanta, but that you could beat around the bush and you were going to do so, and that you said the men there that it was not necessary for them to join a union to get more money.

Did you ever make a statement to a group of employees there in the shop about not wanting to go to Atlanta?

5377 A. No, sir; I did not.

Q. Did you ever tell the men later in any of the meeting that it was not necessary for them to join a union to get more money?

A. I absolutely never have at any time.

Q. It also appears in the record that Mr. King testified that you stated on this occasion that the Transportation Department never had paid and never would pay much money and that it was not necessary for the men to go out and pay some man to sit back and take it easy to do their bargaining for them.

Did you ever make any such statement as that to your men?

A. I never made any statement whereby it was not necessary for them to go out and make their bargain with any outsiders. I have made a statement that the employees were not highly paid men but that they had an advantage of having regular employment. The Transportation employees were not high-paid men ordinarily, but they had regular employment, which offset the advantage of higher pay on the outside.

Q. Mr. King also testified that you asked him on one occasion why he was opposing what he described as a company union.

Did you ever make any such inquiry as that of Mr. King?

A. On one occasion I invited Mr. King into the office. He works at night. I went over one night and invited him into
5378 the office. My reason for doing that was that he was doing a great deal of talking at night and spending entirely too much time off of his job talking to men on the shift in the shop and the men who were operating the cars and buses coming into and out of the barn. I called him in primarily for that reason, because he was talking so much, to tell him that he would have to cut out some of that. He was the most restless man on the job.

In the course of the conversation he told me that he was bitterly opposed to a company dominated union. I told King at the time that I admired his stand and his sincerity but he would still have to cut out his talk on the job.

Q. Did you make any reference to a company union of any kind in your talk with him?

A. I did not.

Q. Did you at any time with your men or any of them try in any way to influence them as to what they should do or should not do on this matter of their labor union affiliations?

A. I avoided it definitely in every way possible.

Q. Were you present in Mr. Throckmorton's office shortly after a meeting that was held there on the night of the 24th, when instructions were given to the superintendents as to their being no interference or attempt in any way to influence the men on this subject?

A. I was.

Q. Did you give those instructions to your foremen?

5379 A. I conveyed it to all of my supervisors and foremen.

Q. To the best of your knowledge and belief, Mr. Cole, were those instructions carried out by your foremen and by you?

A. I am satisfied that they were.

5388 EVERARD M. MANN was recalled as a witness for and on behalf of the National Labor Relations Board and, having been previously sworn, testified in rebuttal as follows:

Direct examination by Mr. HILTON:

5389 Q. I show you what is in evidence as Respondent's exhibit No. 46 and ask you to look at that exhibit. This is an accident summary of the accidents in which you were involved during the time you were employed by the company. I notice that the accidents are marked "A" and "B."

A. Yes, sir.

Q. Can you tell us what that "A" means with respect to an accident in which you were involved?

A. The "A" means an accident in which you are absolved of blame and the "B" is an accident in which they consider that it is your fault.

Q. I will direct your attention to an accident which occurred on September 21, 1936, which is marked as an "A," the cost being $314. Do you recall that accident?

A. This is one on the Fairmount Park Line. It is an accident that occurred on the main line.

Q. Tell us how that accident occurred.

A. That is the accident in which a lady was caught in the rear door of my car. Her leg was caught. I answered a ring of the buzzer to stop at a certain corner out in Fairmount Park on the way in to town. One person got off at my front door and two people got off at the rear door.

5390 Q. Was that a one-man car that you were operating?

A. Yes.

Q. Was it one of the large one-man cars?

A. Yes.

Q. Or was it a small one?

A. It was a large one.

Q. Will you please proceed?

A. The passenger alighted from the front and I closed the front door. The rear door operated by a switch. You throw the switch in the front of the car and when you put your weight on the treadle the back door opens and you descend thereby.

There is also a light in front of each man which will not come on as long as that door is open. I waited an appreciable length of time and the light did not come on. I attempted to start the car but could not. I attempted it the second time but couldn't do so.

Then I heard Mr. Caton, who is a dispatcher for the company who happened to be sitting back in the rear end of the car, which was crowded. I couldn't see from the front to the back. I heard him call out, "Wait a minute, Mann. There is a lady caught here."

Immediately I opened my front door and descended to the street, by which time I saw two ladies standing over on the sidewalk, who were the ones who had been caught in

5391 the door, or one of them was. It was a lady and her mother, who was middle aged.

I walked over to them and asked them if they had been hurt in any way, to which she answered, "You deliberately closed the door on me. You caught me leg." The lady answered that.

I replied, "Madame, it is an automatic door. I am not able to close it on you. It has to close by itself."

Then I asked her what their names were and would they write me their names and addresses, which is the proper procedure in such a case. They did say I would hear about it. So I left them and got back into the car and I took the names of four or five witnesses and cards from different people on the car who would testify, and then I proceeded on my way.

Q. Was there anything wrong with that rear exit door on the car you were operating on that occasion?

A. It worked very well some of the time I was on the car.

Q. Is there any explanation you can offer as to how that lady's leg got caught in the door?

A. The only way I can see it, as she alighted to the ground with one leg one was still up in the door and if she raises the weight from that the door will begin to close and she, being old, probably couldn't get her leg out in time and the door closed on it.

Q. Did you later learn a claim had been filed against the company as a result of this accident?

5392 A. I never heard anything about it until now.

Q. Did you have any knowledge from any source that this accident cost the company $314?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Were you disciplined in any way because of having that accident?

A. No, sir.

Q. You say you were not disciplined?

A. No, sir; I was not.

Q. Did you have any lost time?

A. No, sir.

Q. Did you lose any run?

A. No, sir.

5393 JESSE M. SMITH resumed the stand on behalf of the National Labor Relations Board and testified, on rebuttal, as follows:

Direct examination by Mr. SPENCER:

Q. Mr. Smith, do you recall being at a meeting in the Y. M. C. A. on June the 9th, at which meeting Mr. Underwood from Richmond was present?

A. I do.

Q. And this meeting was a meeting of the E. A. C.?

A. Yes, sir.

Q. Do you recall Mr. Underwood's talk at this meeting?

A. I can recall some of it; yes, sir; but I could not recall all of it.

Q. Will you relate what happened when Mr. Underwood had finished talking?

A. After Mr.——

Mr. SPENCER. I will withdraw it.

By Mr. SPENCER:

Q. What did Mr. Underwood say at that meeting, as far as you can remember?

A. Mr. Underwood said something about he was there—I think Mr. Elliott asked him how did he know we were having a meeting. He said he did not know it. He said, "Well, what are you doing here?" or something to that effect. He said he was in Nor-
5394 folk to visit his aunt that was sick in the hospital. He said, "Well, how did you know we had a meeting over here?" He said someone had told him that morning that they were going to have a meeting, and he said he dropped in to see if he could have a word or at two at the meeting. After Mr. Elliott got through with his talk he called on Mr. Underwood to make a talk. He said, "Mr. Underwood is here from Richmond"—he did say what department he was in, but I do not remember now; engineering department, I believe, or something like that—"and said he wants to have a few words." He said, "What do you fellows think?" And I believe that someone suggested to let him talk. He made his speech in regard to company-wide organization, and he said, "You fellows are going to organize here independent transportation in Norfolk." He says, "You better get 100 percent organization, because the company has sufficient money to fight an organization, and we are going to fight it also."

5413 E. A. BISHOP, a witness previously called by the respondent and duly sworn, was recalled and testified further, as follows:

Direct examination by Mr. MOORE:

5419 Q. I ask you, did you hear the evidence by the stipulation in regard to Mr. Elliott's trip over to Portsmouth in May or June of last year?

A. I heard somebody testify to that last night.

Q. You heard some statement about it last night?

A. Yes.

Q. Did you ever suggest that he go over and read Mr. Holz claw's speech or make a statement over there?

A. I did not.

Q. Did you ever suggest that he go to a meeting at Petersburg at any time?

5420 A. I did not.

Q. Did you ever suggest to him, or to Mr. Reutt, that it would be a good idea for the men to chip in a ten or fifteen cent piece and get themselves a lawyer and form an organization of their own, or anything of that sort?

A. I did not.

Q. Did you at any time make any statement to either Mr. Reutt or Mr. Elliott that the company had funds with which to fight an outside union, and would do so?

A. I did not.

5421 Q. Did you at any time make any statement to Mr. Reutt or Mr. Elliott, indicating your preference as to whether they form an independent organization or go into an outside organization, or whether they should have any organization?

A. I did not.

5427 Cross-examination by Mr. HILTON:

Q. Was Dunbar the only one you had signed up on the board to see you after that occurrence in Couch's place?

A. No; I had several others.

Q. As a matter of fact, you had 16 others signed up, didn't you?

A. I don't know just how many. I testified the other day that I had several of them. I don't know just how many.

Q. Well, how did you know who these men were that had been present in Couch's place on that occasion?

A. It is pretty hard to answer that just now. I do not know just how I got this information. Different ones told me.

Q. You mean different——

A. Employees.

Q. Employees of the company told you?

A. Yes.

Q. And did you have any employees who were reporting such things to you at that time?

5428 A. No.

Q. Did they just happen to come in and tell you?

A. My men tell me most anything like that. They have always done that. Just in an off-way they would come around and tell me a bunch of men, so and so, were drinking.

Q. Well, is that what these men reported to you, that this group of men was at Couch's drinking?

A. I think some of them reported to me: yes.

Q. Did they mention that some union organization activity was going on in Couch's while the drinking was going on?

A. There was something said about that, but I do not recall who said it.

Q. Well, what did you learn from those men in connection with the union that was going on at Couch's place during the drinking?

A. They all denied anything at all about a union.

Q. Well, I mean, did you learn anything about union organization activity going on at Couch's while these men were there drinking?

A. No; I did not learn anything, no more than somebody just said something about they were trying to organize a union or something like that.

Q. Do you recall the men that brought you that information?

A. No; I don't.

5429 Q. And then it was after you received that information that you put these men on the board to see you?

A. That is right.

Q. And during that time was Dunbar sick?

A. Not that I know of.

Q. Did he come to see you shortly after you posted him on the board to see him?

A. He did not.

Q. How long after was it?

A. I don't remember him ever coming to see me.

Q. At the office?

A. No.

Q. Well, how did you notify Dunbar that he was fired?

A. I sent a man after his badge, punch, and blue book.

Q. How long did you wait after posting him on the board before you sent a man after his badge, and so forth?

A. Probably a week; maybe longer.

Q. And did you discharge Dunbar for being drunk?

A. That is correct.

Q. Did you see Dunbar drunk?

A. No.

Q. Did you go to his house to find out if he was drunk?

A. I did not.

Q. What efforts did you make to learn whether or not he was drunk?

5430 A. I got several reports on him from different men that saw him drinking.

Q. Well, where did these men say they saw Dunbar drinking?

A. In Couch's place.

Q. Couch's again?

A. That is the same time. I don't know where he was after he left there. He never showed up.

Q. I believe you stated that Dunbar never applied for reinstatement after you sent to his house for his badge and equipment.

A. He did not.

5470 *Board Exhibit 1*

MEETING OF MAY 24

A substantial number of its employees representing various departments and various occupations have approached the Company with the request that the Company consider with them the matter of their working conditions and wages. In other words, they have requested collective bargaining. The Company's position with respect to this was recently stated in a posted bulletin.

In a company such as ours, if an individual operator, for example, should ask for himself better working conditions or wages, this Company could not comply with his request without also making the same concessions to other similar operators. In such a case the operator who appealed individually would, as a practical matter, be bargaining collectively for all of his group, which is not the logical procedure.

This Company is willing to consider the requests mentioned above but feels that, in fairness to all of its employees and to itself, it should at the same time consider other groups who have not yet come to it. If the approaching negotiations are to be intelligent and fair to all properly concerned, they should be conducted in an orderly way, and all interested groups should be represented in these discussions by representatives of their own choosing, as provided in the Wagner National Labor Relations Act, which provides as follows:

"SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collec-
5471 tively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

The Wagner Act applies only to employees whose work is in or directly affects interstate commerce and to companies engaged in interstate commerce. Counsel for this Company advise us that in

their opinion the provisions of the Act do not apply to local transportation employees, to gas employees in Norfolk, or to certain strictly local employees of the light and power department. In spite of this, the Company wants to make it perfectly clear that its policy is one of willingness to bargain with its employees in any manner satisfactory to the majority of its employees and that no employee will be discriminated against because of any labor affiliations he desires to make.

The petitions and representations already received indicate a desire on the part of these employees at least to do their own bargaining, and we are taking this means of letting you know our willingness to proceed with such bargaining in an orderly manner. In order to progress, it would seem that the first step necessary to be taken by you is the formation of a bargaining agency and the selection of authorized representatives to conduct this bargaining in such an orderly manner.

The Wagner Labor Act prohibits a company from "dominating or interfering with the formation or administration
5472 of any labor organization or contribute financial or other support to it."

In view of your requests to bargain directly with the Company and, in view of your right to self-organization as provided in the law, it will facilitate negotiations if you will proceed to set up your organization, select your own officers and adviser, adopt your own bylaws and rules, and select your representatives to meet with the Company officials whenever you desire.

5473 *Board Exhibit 5*

I. O. E. OF V. E. & P. Co.,
401 E. FRANKLIN STREET,
Richmond, Virginia, July 19, 1937.

Mr. J. G. HOLTZCLAW, *President,*
Virginia Electric and Power Company,
Richmond, Virginia.

DEAR SIR: At the request of the General Committee of the Independent Organization of Employees of Virginia Electric & Power Company I am asking an interview for that Committee with the representatives of the Management of the Virginia Electric & Power Company for the purpose of discussing matters relative to hours, wages, rates of pay, and working conditions of employees of the Company.

The Independent Organization of Employees of Virginia Electric & Power Company has a membership of 2,416, and those members have chosen the General Committee of the Organization to act as their representatives for the purpose of collective bargaining pursuant to the provisions of the National Labor Relations Law. The Organization represents 89% of all employees of the Company below the grade of foreman or a similar grade.

The Committee has formulated certain requests which it desires to submit to representatives of the Company at the earliest possible date.

Respectfully submitted.

EUGENE T. UNDERWOOD,
Chairman, General Committee.

ETU:js.

5474 *Board Exhibit 6*

J. G. Holtzclaw, President.
VIRGINIA ELECTRIC AND POWER COMPANY.
Richmond, Virginia, July 21, 1937.

MR. EUGENE T. UNDERWOOD,
Chairman, General Committee,
I. O. E. of V. E. & P. Co.,
401 East Franklin Street,
Richmond, Virginia.

DEAR MR. UNDERWOOD: We wish to acknowledge your letter of July 19, and also your proposed Articles of Agreement between Virginia Electric and Power Company and the Independent Organization of Employees of Virginia Electric and Power Company, which you handed to us today.

The nature of the suggested revisions in wages, hours, and working conditions contained therein, and also the large number of such revisions requires several days work in analyzing the proposed agreement before we can be fully prepared to meet with the Committee to open the discussion. We are proceeding at once to prepare the necessary facts and figures for discussion with your Committee, and we request that the Committee meet with representatives of the Company at its Executive Offices at 10:00 o'clock Friday morning, July 30, which time and date we hope will be satisfactory.

Will you kindly furnish us, previous to this meeting, with a signed statement certifying as to the number of employees in each department who have joined your organization and by so doing have designated your General Committee to represent them in negotiations with the Company.

Yours very truly,

J. G. HOLTZCLAW
J. G. Holtzclaw,
President.

JGH m.

5475 *Board Exhibit 7*

I. O. E. OF V. E. P. CO.,
401 E. FRANKLIN ST.,
Richmond, Virginia, July 26, 1937.

Mr. J. G. HOLTZCLAW,
President, Virginia Electric & Power Co.,
Richmond, Virginia.

DEAR MR. HOLTZCLAW: In accordance with the request in your letter of July 21, we are attaching a list of the members of the Independent Organization of Employees of the Virginia Electric and Power Company employed in each division of the Company.

You will please note that we have also included a certain number under the listing "unclassified." These cards came in too late to be properly classified, but are included in the grand total. This grand total will also be increased by approximately 50 as this number of cards are in the mail at the present time.

We wish to advise that the time and the place for the meeting suggested in your letter are entirely satisfactory to our General Committee.

We wish also to express our appreciation for the courtesy and cooperation you have given us in calling for a meeting at such an early date, as we realize the large amount of time and work necessary to analyze an agreement of this nature.

Very truly yours,

E. T. U.
EUGENE T. UNDERWOOD,
Chairman, O. I. E. of V. E. P. Co.

5476 *Board's Exhibit 7–A*

Membership roll of the Independent Organization of Employees of Virginia Electric & Power Company compiled by voting sections in Norfolk and Richmond.

Voting section	Norfolk	Richmond	Total
Transportation Shops	110	198	[illegible]
Bus Operators	171	188	[illegible]
Railway Operators	82	222	[illegible]
Maintenance of Way	26	64	[illegible]
Dist. Engineering & Installation	83	116	[illegible]
Dist. Construction	101	180	[illegible]
Production	112	195	[illegible]
System Engineering & Operation		23	[illegible]
Transmission		13	[illegible]
Accounting	102	150	[illegible]
Sales	24	44	[illegible]
General Offices	31	70	[illegible]
Gas	109		[illegible]
Total	951	1,469	2,42[illegible]
Unclassified		9	[illegible]
Grand Total	951	1,478	2,43[illegible]

A. D. BERTOLETT, *Secy.*

App. E. T. UNDERWOOD, *Chairman.*

5477 *Board Exhibit 9*

ARTICLES OF AGREEMENT BETWEEN VIRGINIA ELECTRIC AND POWER COMPANY AND INDEPENDENT ORGANIZATION OF EMPLOYEES OF VIRGINIA ELECTRIC AND POWER COMPANY

(This Copy made May 13, 1938.)

5478 Articles of Agreement, entered into this 5th day of August, 1937, between Virginia Electric and Power Company, a Virginia corporation, hereinafter designated as the "Employer," and The Independent Organization of Employees of Virginia Electric and Power Company, an unincorporated association hereinafter called the "Employee Organization":

Whereas, a majority of the employees of each and every department of the Employer's business are members of the Employee Organization, and have designated in writing the employee Organization, acting through its General Committee, to act as the representative of all the employees (confidential secretaries and part-time employees excepted) of the Employer for the purpose of collective bargaining, in respect to rates of pay, wages, hours of employment, and other conditions of employment; and

Whereas, the Employer and the Employee Organization have bargained collectively with each other and have come to the following formal agreement:

Now, therefore, this Agreement witnesseth: That for and in consideration of the premises, the parties hereto mutually agree as follows:

SECTION A.—RECOGNITION

The Employer recognizes the Employee Organization acting through the duly elected General Committee of the Employee Organization as the duly designated and selected
5479 representative of all the employees of Virginia Electric and Power Company who hold positions below the grade of foreman or below a similar grade (confidential secretaries and part-time employees excepted), for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment. The Employer agrees that the Employee Organization may set up bulletin boards of its own on property of the Employer for the purpose of posting notices of meetings and any other Employee Organization matters.

SECTION B.—GENERAL PROVISIONS

The following provisions are hereby agreed upon affecting all employees of the Employer eligible to membership in the Employee Organization:

1. Membership as a Condition of Employment

All present, regular and temporary employees of the Employer, except temporary employees on construction jobs, and all future employees, except temporary employees on construction jobs, who shall have been in the employment of the Employer for at least ninety days and who hold positions below the grade of foreman or below a similar grade (confidential secretaries and part-time employees excepted), are eligible to membership in the Employee Organization.

During the term of this agreement, the Employer hereby agrees not to retain in its employment for a period of more than ninety days after the date of this agreement any employee
5480 eligible for membership in the Employee Organization, unless such employee is a member of the Employee Or-

ganization. The Employee Organization agrees to furnish to the Employer within five days after the signing of this agreement a complete list of all members of the Employee Organization and thereafter to keep said membership roll so furnished to the Employer currently up to date.

Nothing contained in this agreement shall prevent or in any wise affect the right of any employee to join or remain a member of any other labor organization.

2. Collection of Dues

The Employer agrees to accept a written order signed by any member of the Employee Organization authorizing the Employer to deduct from that member's wages the amount therein specified and to pay to the Employee Organization said amount less the Employer's cost of making such deduction. Any such order may be revoked at any time by notice in writing given by the employee to the Employer.

3. Termination of employment

The management of the business of the Employer and the assignment and direction of its working forces, including the right to employ and discharge, are vested exclusively in the Employer, subject to the requirements of law and the following limitations:

5481 Discharges shall be effected for just cause only, and there shall be no discrimination against any employee because of his membership in the Employee Organization. A discharged member shall within thirty days after his discharge have the right to appeal through the Employee Organization to the Employer, with final submission to arbitration, all as hereinafter provided in Section B–7; such appeal to the Employer shall be filed in writing with the Employer and shall set forth briefly the grounds thereof. If the Employer agrees to or is required to reinstate such discharged employee, such employee shall receive full compensation at his regular rate for time lost, less any amount received by the employee from any source for his services including any unemployment insurance benefits for the period since the date of discharge. There shall be no break in the service record of such discharged employee and after reinstatement he shall not be discriminated against by the Employer in respect of his employment.

4. Continuance of Certain Existing Benefits to Employees

The employer agrees to continue during the term of this agreement its present practices with respect to (a) the issuance to

employees of free transportation privileges on its street railway cars and buses; (b) contributions to Virginia Electric and Power Company Benefit Association; (c) contributions to group insurance; and (d) educational privileges.

5482 5. Governmental Regulation of Hours and Wages

In the event any of the wages or hourly arrangements as provided for in this agreement shall be affected by any Federal or State Legislation or any lawful order or regulation of any governmental agency, then it is understood between the parties hereto that all hours of work and rates of pay provided for in this agreement shall thereupon become the subject matter for further negotiation between the parties.

6. Overtime Payments

All work of employees on hourly rates of pay shall be compensated for on a straight time basis except work done "in emergency," which shall be hereinafter defined with respect to each department affected and shall be compensated for as overtime on a time and one-half basis. Overtime payments shall not apply to salaried employees.

7. Procedure for Adjusting Grievances

(a) All grievances as to the meaning of the provisions of this agreement, the administration of the practices provided for herein and the performance of the obligations assumed by the parties hereto shall be adjusted through direct contact between any group of employees, through the duly authorized representatives of the Employee Organization, and the representative of the Employer having supervision over that group. Should the decision be unsatisfactory to the Employee organization, negotiations
5483 shall be continued through the higher bodies of the Employee Organization with corresponding higher representatives of the Employer; and should an agreement not be reached the dispute shall be submitted to arbitration at the request of either party in accordance with the following procedure:

The Board of Arbitration shall consist of two members of the Employee Organization selected by the Division Committee of the Employee Organization affected by the matter in controversy, and two representatives of the Employer, together with an impartial chairman who shall be selected by a majority of the arbitrators so chosen. The impartial chairman shall not be an officer, director, or employee of the Employer or a member of the Employee Organization. Should either party fail to appoint its two arbitrators

or should the arbitrators, so chosen, be unable to agree upon the impartial chairman, within the time stated below, such appointment shall be made by the American Arbitration Association, upon the written request of either party. The various steps required in connection with any arbitration shall be taken as expeditiously as possible, but in any event the following steps shall be taken within the time stated unless an extension be mutually agreed to in writing:

(w) Within five days following the serving by either party upon the other of a written demand for arbitration, each party shall designate the arbitrators to be selected by it.

(x) Within five days following the designation of said four arbitrators, the impartial chairman shall be selected by them.

(y) Within five days following the selection of such impartial chairman, hearings shall be started.

5484 (z) Within fifteen days following the completion of the presentation of the case the arbitrators shall render their decision in writing.

The decision of a majority of said Board of Arbitration shall be final, and the Employer and the Employee Organization agree to abide by such decision. The compensation and expenses of the impartial chairman and of the American Arbitration Association shall be borne jointly by the Employee Organization and the Employer.

(b) It is understood that basic wage rates and the normal workweek and normal workday as related thereto are not matters to be dealt with as grievances under this Section 7.

8. Authorized Holidays

The holidays now observed by the Employer shall continue to be observed and any additional holidays are to be agreed upon by mutual consent.

SECTION C.—TRANSPORTATION DEPARTMENT EMPLOYEES

I. The following provisions and rules are hereby agreed upon affecting Bus and Railway Employees in the Transportation Department of the Employer:

(a) Hours

1. Except as otherwise provided herein, between eight and nine hours shall constitute a day's work, and a week's work consisting of six days shall be a minimum of forty-eight hours and a

5485 maximum of fifty-four hours. A Leeway of 20% of all assigned runs shall be allowed exceeding fifty-four hours

in length and in such cases the maximum of fifty-four hours shall not apply as a week's work, but the number of hours called for by such runs shall constitute a day's work for such positions. Not more than 10% of assigned runs shall be three-part runs.

2. No position shall consist of more than three parts and any employee working a two-part or three-part position shall be paid for not less than eight hours within a spread of fourteen hours with leeway as above provided and shall be paid at the rate of time and one-half for all time in excess of twelve consecutive hours.

3. Any employee who is required to report for duty and is not used shall be paid for one hour's work, and no employee shall be relieved for duty for less than one hour, except as called for on board assignment, without pay.

4. Each regularly assigned employee shall be given one day of rest out of each seven days.

(b) Wages

The following hourly rates of pay shall apply to all hourly employees:

Bus and streetcar operators of one year or more continuous service ..... 30c per hour

Bus and streetcar operators of ninety days to one year's continuous service ..... 55½c per hour

4586 Bus and street car operators, for first nin[illegible] days' service 52c per hour

Elevator operators, change [illegible], register readers, switchmen, reservoir custodians, and r[illegible]n room attendants shall receive during the term of this agr[illegible]t an increase in pay as follows:

(1) For Hourly Paid Employees: 15% increase for the first 30c of present hourly wage rate; 10% increase for the next 30c or fraction thereof; and 5% increase on excess; the total rate to be adjusted to the nearest half cent.

(2) For Salaried Employees: 15% increase for the first $50 of salary per month; 10% increase for the next $50 per month or fraction thereof; and 5% increase on excess.

(c) Seniority

1. Except as hereinafter provided, straight seniority, based upon the date of present employment, shall strictly govern the assignment of runs and all positions to be filled on and after the date of this agreement up to and including Supervisors, Dispatchers, and Cashiers in Transportation Department.

2. With respect to all promotions affecting Railway only, seniority of Railway employees shall govern.

3. With respect to all promotions affecting Bus only, seniority of Bus employees shall govern.

4. With respect to promotions to supervisors, cashiers, or any other assignment that may affect both Railway and Bus employees alike, then seniority shall alternate.

5487 5. Railway operators who voluntarily request a change to bus operators shall rate their seniority on the bus board from the date of the change over, not from date of employment.

6. Bus operators who voluntarily request a change to railway operators shall rate their seniority on the railway board from the date of the change over, not from the date of employment.

7. If at any time after date of this agreement, a railway line is replaced with buses in Richmond, railway seniority shall govern on such line or lines.

In Norfolk, if at any time after date of this agreement, railway operators automatically become bus operators when a route is changed from railway to bus, they shall rate seniority on the bus board from date of employment as follows: If there are the same number of runs after the change, as there were before the change, they shall be assigned to the railway operators who are just being converted to bus operators, the converted men taking their runs with them. If, however, the change over creates more bus runs than there were railway runs, former converted railway operators may choose the newly created early, swing, and late runs and original bus operators (who were never railway operators) may choose the remainder of runs, if any, according to seniority rank.

8. New positions or vacancies among operators shall be posted within seven days, for a period of three days, on a bulletin

5488 board in the waiting room at the dispatching office having jurisdiction, where it will be accessible to all employees; the bulletin to show the location of the run, where the run starts, description of position, starting time, and day of rest. Positions shall be assigned within five days after the posting of same.

9. Any position being vacant, due to illness or leave of absence, for a period of seven (7) days, shall be temporarily assigned to the senior employee on the extra board.

10. Any position being vacant ninety (90) days, due to illness or leave of absence, shall be declared a vacancy and shall be posted in accordance with rule 8 above.

11. Any employee returning after illness or leave of absence may return to his former position, or may, upon return, or within two (2) days thereafter, displace a junior employee, who shall exercise his seniority in like manner.

12. When the established time for a regular position is changed more than one hour for more than seven days, the employee may, within five (5) days thereafter, upon thirty-six hours' advance

notice to his Superintendent, exercise his seniority rights to any position held by a junior employee. Other employees affected may exercise their seniority rights in the same manner.

13. Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness, and ability; fitness and ability being sufficient, seniority shall pre-
5489 vail. Final determination of fitness and ability shall rest in the Employer.

(d) Conditions of Work

1. Employees taken away from their regular assigned duties at the request of the management to attend court, or to appear as witnesses for the Employer, shall be furnished transportation, and will be allowed compensation equal to that which would have been earned had such an interruption not taken place, and, in addition, necessary actual expenses while away from headquarters. Any fee or mileage allowance collected as a part of court costs will be assigned by the employee to the Employer.

2. Employees shall have the right to negotiate and contract for uniforms, shirts, and caps through a contractor having a local representative who will insure proper fitting and such uniforms shall be subject to the Employer's approval as to quality, style, and color. The Employer shall continue to pay for the same, deducting the cost from the employee's pay, together with the cost of making such deductions, and interest on monies advanced, as under the arrangement in effect on the date of this agreement.

3. Employees shall be allowed to wear cotton trousers during summer months, the Employer to determine their color and style.

4. The Employer shall provide a reasonably adequate number of cashiers and filling station attendants, so as to prevent any undue delay of the employees in making settlements,
5490 and will so schedule the runs as to allow adequate running time from the end of the line to the garage or car barn.

II. The following provisions and rules are hereby agreed upon affecting shop and track employees in the Transportation Department of the Employer:

(a) Hours

A normal work week shall not exceed forty eight (48) hours.

(b) Overtime Payments

Both shop and track employees shall be paid for overtime as follows:

The normal day's work may be extended not to exceed two hours and shall be compensated for on a straight time basis and any

further extension of the working day shall be deemed to be emergency time. All time worked by employees, other than shift employees, on Sundays, nights, or holidays shall also be deemed to be emergency time. "Shift employees" wherever referred to in this agreement in any section means an employee whose regular assignment calls for work on a particular schedule.

(c) Wages

The following increases of pay for all track and shop employees are hereby agreed upon:

5491 (1) For Hourly Paid Employees: 15% increase for the first 30¢ of present hourly wage rate; 10% increase for the next 30¢ or fraction thereof; and 5% increase in excess; the total rate to be adjusted to the nearest half cent.

(2) For Salaried Employees: 15% increase for the first $50 of salary per month; 10% increase for the next $50 per month or fraction thereof; and 5% increase on excess.

SECTION D.—ELECTRIC DEPARTMENT

I. The following provisions are hereby agreed upon affecting employees in the transmission and system engineering and system operating branches of the Electric Department of the Employer:

(a) Hours

Except as to office personnel, who are to work the same hours as provided in this agreement for employees in the General Office, all employees in the transmission and system engineering and system operating branches are to work the same number of hours as at present.

(b) Wages

The following increases of pay for all employees in these classes are hereby agreed upon:

15% increase for the first $50 of salary per month; 10% increase for the next $50 per month or fraction thereof; and 5% increase on excess.

5492 II. The following provisions are hereby agreed upon affecting employees in the production operating, the production maintenance and construction, and the distribution en-

gineering and installation branches of the Electric Department of the Employer:

(a) Hours

The hours of employment are to remain the same as at present.

(b) Overtime payments

The normal day's work may be extended not to exceed two hours and shall be compensated for on a straight time basis and any further extension of the working day shall be deemed to be emergency time. All time work by employees, other than shift employees, on Sundays, nights, or holidays shall also be deemed to be emergency time.

(c) Wages

The following increases in pay for all employees in these classes are hereby agreed upon:

(1) For Hourly Paid Employees: 15% increase for the first 30¢ of present hourly wage rate; 10% increase for the next 30¢ or fraction thereof; and 5% increase on excess; the total rate to be adjusted to the nearest half cent.

(2) For Salaried Employees: 15% increase for the first $50 of salary per month; 10% increase for the next $50 per month or fraction thereof; and 5% increase on excess.

5493 (d) Working Conditions

Seniority rights based on length of service shall be given reasonable consideration in determining assignments, furloughs, and lay-offs.

III. The following provisions are hereby agreed upon affecting employees in the distribution and construction branches of the Electric Department of the Employer:

(a) Hours

The regular hours of work are to remain the same as at present.

(b) Overtime Payments

The normal day's work may be extended not to exceed two hours and shall be compensated for on a straight time basis and any

further extension of the working day shall be deemed to be emergency time. All time worked by employees, other than shift employees, on Sundays, nights, or holidays shall also be deemed to be emergency time.

(c) Wages

The following increases in pay for all employees in these branches of the Electric Department are hereby agreed upon:

(1) For Hourly Paid Employees: 15% increase for the first 30¢ of present hourly wage rate; 10% increase for the next 30¢ or fraction thereof; and 5% increase on excess; the total rate to be adjusted to the nearest half cent.

(2) For Salaried Employees. 15% increase for the first
5494 $50 of salary per month; 10% increase for the next $50 per month or fraction thereof; and 5% increase on excess.

SECTION E.—GAS DEPARTMENT

The following provisions are hereby agreed upon affecting employees in the Gas Department of the Employer:

(a) Hours

The normal day's work shall remain the same as at present.

(b) Overtime Payments

The normal day's work may be extended not to exceed two hours and shall be compensated for on a straight time basis and any further extension of the working day shall be deemed to be emergency time. All time worked by employees, other than shift employees, on Sundays, nights, or holidays shall also be deemed to be emergency time.

(c) Wages

The following wage scale is agreed upon for all employees of the Gas Department of the Employer:

(1) For Hourly Paid Employees: 15% increase for the first 30¢ of present hourly wage rate; 10% increase for the next 30¢ or fraction thereof; and 5¢ increase on excess; the total rate to be adjusted to the nearest half cent.

5495 (2) For Salaried Employees: 15% increase for the first $50 of salary per month: 10% increase for the next $50 per month or fraction thereof; and 5% increase on excess.

(d) Allocation of Work Load

The allocation of the work load shall be performed without discrimination and all shifts shall be properly rotated.

(e) Working Conditions

Seniority rights on length of service shall be given reasonable consideration in determining assignments, furloughs, and lay-offs.

During extended periods of reduced service loads, temporary employees shall be laid off first and the work week reduced before employees with five years or more service be laid off.

Every high pressure complaint truck shall have a helper for the safety of employees and efficiency in working conditions.

(f) Payment of Salaries

Salaried employees shall be paid twice a month along with the hourly employees on the days they are paid in this department, namely, on the fourth and the nineteenth days of each month.

5496 SECTION F.—ACCOUNTING, SALES, AND GENERAL OFFICE

The following provisions are hereby agreed upon affecting employees in the Accounting, Sales, and General Office Departments of the Employer:

(a) Hours

The normal work week for all employees in these departments shall be thirty-seven and one-half hours, covering insofar as practicable five continuous working days—Monday to Friday, inclusive, extending from 8:30 A. M. to 5 P. M., with one hour for lunch.

It is understood and agreed that a skeleton staff, to be fairly selected and rotated by the heads of the respective departments, will be required which shall be kept on duty on Saturdays in cooperation with other departments in order to furnish adequate service to the public.

The employees selected from time to time for Saturday work in such skeleton organization shall be allowed compensating time off at times to be agreed upon between the employee affected and the head of his department.

(b) Wages

The following wage increases are hereby agreed upon with respect to employees in the above departments:

5497 Seven and one-half per cent in the salaries of all employees receiving less than $300 per month, excluding salesmen working wholly or in part on a commission basis, temporary and part-time employees and supervisors.

SECTION G.—DURATION OF AGREEMENT

1. This agreement shall commence and be binding upon the parties hereto as of the 1st day of June 1937, and shall continue in force and effect for one year from said date; and all increases in pay shall date from June 1, 1937; and it shall be deemed a continuing agreement automatically renewing itself for additional yearly periods thereafter unless terminated as hereinafter provided.

2. Either party shall have the right to terminate this agreement at the end of any annual period by giving to the other party at least thirty days' notice in writing of its election to terminate the agreement; and upon giving of such notice, the agreement shall come to an end at the expiration of the annual period.

3. This agreement may be amended at any time by mutual consent of the parties hereto, and such amendments are to become a part of this agreement from the date of adoption.

5498 In witness whereof, the said parties have caused this agreement to be executed in their names by their duly authorized officers.

For the Virginia Electric and Power Company, by J. G. Holtzclaw, President; For the Independent Organization of Employees of Virginia Electric and Power Company, by Eugene T. Underwood, Chairman, General Committee; Eugene T. Underwood, Member, General Committee, Independent Committee, Richmond Division; Damon M. Tatem, Member, General Committee, Independent Committee, Norfolk Division; Arthur D. Bertolett, Member, General Committee, Electric Division; Leo H. Walsh, Member, General Committee, Gas Division; Chas. McHorney, Member, General Committee, Gas Division; W. W. Faust, Member, General Committee, Electric Division; M. D. Hough, Member, General Committee, Transportation Division; M. E. Wash, Member, General Com-

5499 mittee, Transportation Division; A. L. Clark, Member, General Committee, A. S. & G. Division; Shelton N. Woodard, Jr., Member, General Committee, A. S. & G. Division.

5500 *Board Exhibit 19*

JOINT MEETING OF NORFOLK AND RICHMOND COMMITTEES IN PETERSBURG, JUNE 3, 1937

Meeting called for June 2, 1937, to be held at the Virginia Electric & Power Company Offices in Petersburg was postponed until June 3, 1937, by recommendation of Richmond Chairman.

Meeting was called to order by Richmond chairman, acting by general consent of the body at 9:00 P. M.

Mr. Bertolett, upon suggestion of the Chairman of the meeting, and by general consent of the body was authorized to act as secretary of the meeting.

By the procedure of individual self-introduction and identification the roll was called. The following men represented Norfolk Division:

Mr. Brown	220
Mr. Gregory Mr. Watsh	110
Mr. Nickerson	22
Mr. Diggs	130
Mr. Huff (Car) Mr. Elliott (Bus)	293
Mr. Morris	29
Mr. Tatem	111
Total	915

The following men represented Richmond Division:

Mr. Underwood.
Mr. Clark.
Mr. Bertolett.

The Chairman opened the meeting by a general announcement of the purposes of the Richmond Committee, present and emphasized at considerable length the importance of harmony of purpose and action; and invited discussion of the question of proper legal counsel to further our interests.

Mr. Nickerson proposed that we procure counsel that is definitely partial to the general interests of labor and submitted the follow-

ing names of such lawyers available in Norfolk, Messrs. Hoffman and Breeden.

The Chairman stated that in Richmond the preference is for a lawyer who is neutral in every possible way.

Mr. Tatem proposed that we now proceed to select a lawyer of neutral background.

Mr. Morris proposed that such a lawyer be drawn from a neutral community such as Petersbury.

Mr. Diggs affirmed these suggestions.

Mr. Brown affirmed these suggestions.

5501 Mr. Elliott inquired regarding the attitude in the Richmond Division of the Company Officials toward the proposed "Alliance of Workers."

The Chairman replied that the Officials in Richmond have leaned over backwards in order to avoid any contact with the movement instituted there. No aiding or abetting in any way was carried on by any Official or even minor Official regarding the organizing activity there.

Mr. Tatem requested that names of various lawyers in Petersbury be submitted for discussion.

Mr. Gordon Bohannon.
Mr. Earle White.
Mr. Townsend.
Mr. Oliver Pollard.

Were presented for consideration. Mr. Tatem proposed that emphasis be layed upon the standing of their lawyers as corporation lawyers, because of the importance of their ability in this respect to the continuation of our proposes. Mr. discussion brought out that Mr. White and Mr. Bohannon would be the most eligible.

Mr. Elliott points out that unless we are duly elected and authorized to act in accordance with the provisions of the "Wagner Act" that all our action in this meeting might be thrown out and the entire organization squashed.

The Secretary agreed with Mr. Elliot that this body cannot act unless the members present are specifically authorized to act upon the issues that might come up at this meeting.

A counting of representation was proposed and carried out with the conclusion that a substantial majority of the workers personnell of the Norfolk Division was represented at this meeting.

Mr. Diggs moves that we select a lawyer from Petersburg to carry on the work of forming in a legal and proper manner the desired "Alliance of Workers."

Mr. Bertolett proposes that for several reasons there be separate lawyers to represent the two Divisions.

Mr. though not a member at committee endorses the idea of a single lawyer.

Mr. Nickerson approved of Mr. Bertolett's proposal.

Mr. Bertolett moves for amendment to motion to provide for separate lawyers for each Division, motion was seconded by Mr. Elliott. Amendment was deterated by vote of 6 to 4.

5502 Original motion was passed by vote of 8 to 2.

Qualification of Mr. Bohannon and Mr. White were reviewed by Mr. .

Mr. Diggs moves that Mr. Bohannon be chosen as first choice and that Mr. White be chosen as second choice and Mr. Pollard as third choice.

Motion seconded by Mr. Morris.

Motion passed unanimously.

Motion by secretary to contact the potential lawyers at once to determine their availability for services. Not at home when called on phone.

Motion by Mr. Tatem that Chairman be selected by him shall constitute a committee to retain the lawyer at earliest possible duty, motion passed unanimously.

Discussion of procedure to be followed in Norfolk Division for carrying out purpose of organizing in such a way as to be able to act authoritatively with the lawyer.

Decided by general consent of body to form a steering committee to meet Monday night, June 7, 1937.

Motion to adjourn at 11:20 P. M., motion seconded and passed.

(Signed) A. D. BERTOLETT, *Secy.*

Approved E. T. UNDERWOOD, *Chairman.*

5503 *Board Exhibit 20*

NORFOLK, VIRGINIA,
June 7, 1937.

A meeting was called at 8:15 P. M. on the sixth floor of the V. E. P. Co. building at Boush and Bute Streets. The minutes of the joint meeting held in Petersburg of June 3, 1937, were read and approved.

Mr. Tatem informed us that through the information obtained from Mr. Underwood of Richmond, that Mr. Earle White was selected to draw up the Constitution and By-laws. It was also stated that Mr. Gordon Bohannon would rather not accept the task of writing a Constitution and By-laws as he was affiliated with other concerns and would have no protection as to his position. Mr. White is to draw up several Constitutions and By-laws for approval.

It was proposed that a Steering Committee be formed to coincide with the Richmond Division. In accordance with this sug-

gestion, which occurred at Petersburg, Mr. Brown made a motion that the men that are representing the respective departments be segregated to represent their department and the matter of electing a temporary chairman. The motion was seconded and passed by a vote of sixteen to one.

Candidates for temporary chairman as per the above motion were: Mr. Tatem of the Production Department. As there were no other candidates the motion was closed. A question arose as to the number of votes each department was entitled to. After a brief discussion the entire body was referred to the minutes of the joint meeting in Petersburg, that there by only one representative from each department, with only one vote. In view of this, Mr. Elliott stated that there were four representatives from the Transportation Department with the authority of the employees of that department to vote, and to act as they saw fit. Mr. Elliott was again referred to the minutes of the joint meeting held in Petersburg on June 3, 1937, which he attended and voted on the plan of one vote from each department. Mr. Tatem was elected as chairman of the Steering Committee by a vote to seven to one.

5504 This voting did not include the Transportation Department as they refused to vote on the grounds agreed upon in Petersburg.

Mr. Tatem took the chairmanship over as Chairman of the Steering Committee of the Norfolk Division, replacing Mr. Nickerson. Mr. Tatem explained and answered all questions very thoroughly and satisfactorily.

Candidates for Secretary were as follows: Mr. Keeter, Mr. Diggs.

Mr. Diggs was elected by a vote of four to two.

Mr. Tatem explains that the committee duties are only temporary and when the Constitution is adopted, all officers and committeemen will be elected to act with full authority to act in accordance with the Constitution.

The meeting for next Thursday was cancelled by general consent of the entire body present, as the Secretary will notify each representative in due time before the next meeting is called.

By the general consent of the entire body a rising vote of thanks was given to Mr. Nickerson for the work he had given in organizing this association.

The meeting was adjourned at 9:30 P. M., by the general consent of the entire body present.

E. T. Diggs.
Secretary (Temporary).

5505 *Board Exhibit 32*

I HEREBY APPLY FOR MEMBERSHIP IN THE

INDEPENDENT ORGANIZATION OF EMPLOYEES

OF VIRGINIA ELECTRIC & POWER COMPANY

and I hereby expressly bind myself to abide by the constitution and bylaws of that organization. I hereby empower that organization and the General Committee of the organization, as the supreme body of the organization, to act as my bargaining agency to negotiate with the management of the Virginia Electric & Power Company on matters relating to wages, hours of work, safety, sanitation, working conditions, and all other matters involving the relationship of Virginia Electric & Power Company with its employees.

Given under my hand this day of .

(Sign name here)

To Virginia Electric & Power Company:

The Virginia Electric & Power Company will please pay to the Treasurer of the Independent Organization of Employees of Virginia Electric & Power Company $3.00 per year, in semiannual installments, in advance, less the cost of making such deductions and deduct the said sum of $3.00 from my salary, until this assignment is revoked in writing by me.

Dated: ------ ---

(Sign name here)

Notice of the above assignment is hereby acknowledged, and the above amounts will be paid, as directed.

VIRGINIA ELECTRIC & POWER COMPANY.

Dated: ------ By ---

5506 *Board Exhibit 33*

NORFOLK, VIRGINIA,
March 30, 1938.

Mr. T. N. HARRELL.

DEAR SIR: The Grievance Committee, composing of Duke Brown, Jack Kersy, Lenny Tolan, and B. E. Knight, decided to talk to Mr. Holik about your case.

There is nothing we can do about this, as you were one of the last 3rd-class men that was rated. The lay-off was conducted by

the rating. So many 2nd-class and 3rd-class and ground men, seniority ruled in the different classes, and not men.

Yours truly,

B. E. KNIGHT.
B. E. Knight.

5507 *Board Exhibit 36*

CONSTITUTION OF THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC & POWER COMPANY

DECLARATION

The employees of the Virginia Electric & Power Company, desiring to create an organization to act as their bargaining agency, to negotiate with the management of the Company on matters relating to wages, hours of work, safety, sanitation, working conditions, termination of employment, and all other matters of mutual interest, and to promote the social, economic, and general welfare of the employees among themselves, do hereby establish and adopt the following constitution and bylaws.

ARTICLE I.—NAME

The name of the organization is to be The Independent Organization of Employees of the Virginia Electric & Power Company.

ARTICLE II.—PURPOSES

The purpose for which said organization is formed is to act as a bargaining agency for its members to negotiate with the Virginia Electric & Power Company on all matters involving the relationship of Virginia Electric & Power Company with its employees, and as such bargaining agency, to sign contracts and enter into agreements with the management of the Company, and in general to promote the social, economic, and general welfare of the employees of the Company among themselves.

ARTICLE III.—MEMBERSHIP

The members of this organization shall be all the present regular and temporary employees of the Virginia Electric & Power Company, except temporary employees on construction jobs, and all future employees, except temporary employees on construction jobs, who shall have been in the employment of the Company for at least ninety days, who hold positions below the grade of foreman or below a similar grade. Every member who has paid his dues as provided in the bylaws shall be entitled to vote for representatives in the manner hereinafter provided.

5508 ARTICLE IV.—ORGANIZATION

SECTION 1. The members of the Organization shall be divided into voting divisions, as follows: All employees in the transportation department of the Company, except office employees, shall be included in the first voting division; all employees in the electric department of the Company, except office employees, shall be included in the second voting division; all employees in the gas department of the Company, except office employees, shall be included in the third voting division; and all employees in the accounting and sales department of the Company, and all office employees generally, shall be included in the fourth voting division.

SECTION 2. (a) The first voting division shall be divided into four voting sections according to the work done by employees in that division, under the names of "track-men voting section," "bus voting section," "railway voting section," and "shop voting section."

(b) The second voting division shall be divided into six voting sections according to the work done by employees in that division, under the names of "transmission voting section," "system engineering and operating voting section," "production operating voting section," "production maintenance and construction voting section," "distribution engineering and installation voting section," and "distribution construction voting section."

(c) The third voting division shall be divided into three voting sections according to the work done by employees in that division, under the names of "gas production voting section," "gas distribution voting section," and "gas maintenance voting section."

(d) The fourth voting division shall be divided into three voting sections according to the work done by employees in that division, under the names of "accounting voting section," "sales voting section," and "office personnel voting section."

SECTION 3. The members of each voting section in the first, second, and fourth voting divisions, shall elect from the membership of said section two representatives, one from the
5509 Norfolk division of the Company and one from the Richmond division of the Company, and the members of each voting section in the third voting division shall elect from its membership two representatives to serve on a division committee to be composed of two representatives from each section in each voting division. The delegates elected to the four division committees from the Norfolk division shall jointly form the Norfolk Interdepartmental Committee, and the representatives elected from the Richmond division to the three division committees shall jointly form the Richmond Interdepartmental Committee. The

first, second, and fourth Division Committees shall elect one member from among the Norfolk Division representatives on said committee, and one member from the Richmond Division representatives, and the third division committee shall elect two members, and each Interdepartmental Committee shall elect one member to serve as representatives on the General Committee of the Organization, which is to be the supreme body of the Organization.

SECTION 4. In voting for representatives to the General Committee the members of both the Division Committees and the Interdepartmental Committees shall each be entitled to cast the number of votes which will equal one vote for each employee represented by the voting section from which such representative was elected, in order that all the employees in the Organization may have equal representation in the election of representatives to the General Committee.

SECTION 5. Any member of the Organization shall be eligible for nomination and election as a member of any Division Committee, any Inter-Departmental Committee and the General Committee of the Organization, provided such employee (a) has been one year or more in the continuous service of the Company immediately prior to the election; and (b) is over the age of twenty-one years; and (c) at the time of nomination and election is employed in the voting division which he is to represent.

SECTION 6. Every member of this Organization shall be entitled to vote with his voting section for representatives to
5510 the Division Committee from the voting section to which such member belongs.

SECTION 7. On petition of twenty-five per cent of the members of a voting section electing a representative, it shall be the duty of the Chairman of a Division Committee to call an election in said voting section, to be held in accordance with the bylaws of the Organization, to determine whether such representative shall be removed from office. In such election, if two-thirds of the members voting shall vote in favor of such removal, then the office of such representative shall be vacant, and a special election shall be called to fill such vacancy. In event the Chairman is the representative affected, the Secretary of the Division Committee shall act in his stead.

ARTICLE V. ELECTION OF REPRESENTATIVES

SECTION 1. There shall be an annual election for Division Committee representatives on the first Monday that is not a holiday in the month of July, in each year. Such elections shall be held and conducted as provided in the bylaws of the Organization.

SECTION 2. There shall be an annual election of representatives to the General Committee of the Organization by the Division Committee representatives from their own number and by the Interdepartmental Committee representatives from their own number. The procedure governing the election of representatives to the General Committee of the Organization shall be such as each committee may from time to time establish, but such elections must be held within two weeks after the election of representatives to the Division Committees.

SECTION 3. When any representative to any committee of this Organization ceases to be an employee of the voting section which he represents, his office shall automatically become vacant. Any vacancy in a Division Committee shall be filled at a special election of the members of the proper voting section called and conducted as provided in the bylaws of the Organization. Any vacancy in the General Committee of the Organization shall be filled by the Division or Interdepartmental Committee entitled to elect the representative to fill such vacancy.

5511 All vacancies must be filled within thirty days, and a representative elected to fill a vacancy shall serve for the unexpired term of the representative whom he shall succeed.

ARTICLE VI. POWERS AND DUTIES OF THE GENERAL COMMITTEE OF THE ORGANIZATION

SECTION 1. The General Committee of the Organization shall elect from its number, within one week after the election of representatives to said Committee, a Chairman and a Secretary, who shall perform the duties usually pertaining to such offices. It shall also elect, at the same time, from the membership of the Organization, a General Treasurer of the Organization, whose duty it shall be to receive and disburse all money of the Organization in accordance with the directions of the General Committee of the Organization. The Treasurer shall give bond with corporate surety in such amount as the General Committee of the Organization shall require, and shall receive such compensation as the General Committee shall allow. The General Committee shall make up and send to each member of the Organiaztion an annual account of all receipts and disbursements, the same to be made on July 1st of each year, and such statement shall be certified by outside auditors.

SECTION 2. The General Committee of the Organization shall hold regular quarterly meetings on dates and at places to be specified by the Committee, and shall hold special meetings at any time upon call of the Chairman or any two members of the Committee. Members of the Committee shall be given at least four days' written notice of any meeting, unless such notice be waived in writing.

Two-thirds or more of all members of the General Committee shall be necessary to constitute a quorum, and the vote of a majority of the quorum shall be deemed to be the vote of the General Committee of the Organization.

SECTION 3. It shall be the duty of the General Committee of the Organization to negotiate with the Company all contracts and agreements relative to wages, rates of pay, hours of employment, and conditions of work, including the adjustment of grievances and labor disputes. The Committee shall have power to execute such contracts and agreements, but in no event shall any contract or agreement be executed relative to wages, rates of pay, hours of employment, and conditions of work, affecting the members of the Organization, in any voting division of the Organization, until the provisions of the contract affecting the members of such voting division shall have been approved by the Division Committee of such voting division.

5512

SECTION 4. The General Committee of the Organization shall have full control over the expenditure of the funds of the Organization, and shall employ such agents, servants, and attorneys, as the General Committee of the Organization shall think proper, and shall pay for the services of such agents, servants, and attorneys out of funds of the Organization.

SECTION 5. Any grievance or any dispute, involving members of more than one division of the Organization or the employees of more than one department of the Company, shall be referred to the General Committee of the Organization for action.

ARTICLE VII.—MEETINGS AND POWERS OF DIVISION AND INTERDEPARTMENTAL COMMITTEES

SECTION 1. Each division committee and each interdepartmental committee shall elect from its number a Chairman and a Secretary who shall perform the duties usually pertaining to such offices. Each such committee shall organize and elect such officers within two weeks after the election of the representatives composing said committee.

SECTION 2. The Chairman of any such committee may, in his discretion, call a meeting thereof at any reasonable time, and he shall call such a meeting upon the request of any two members of such committee. Four days' written notice of the time and place of such committee meeting shall be given each member thereof unless such notice be waived in writing.

SECTION 3. Two-thirds or more of all members of any such committee shall be necessary to constitute a quorum, and the vote of a majority of the quorum shall be deemed to be the vote of the committee.

SECTION 4. It shall be the duty of each Division Committee to negotiate with the supervising personnel relative to matters which concern only the employees of such division. It shall be the duty of each Interdepartmental Committee to negotiate with the supervising personnel relative to matters solely pertaining to the employees in the Norfolk division or the Richmond division, as the case may be.

SECTION 5. The consideration of any matter may be initiated before any committee by any of the members of such committee, or by any member of the Organization with the consent of the Chairman of such committee. If it appears that such matter should properly come before some other committee, the Secretary of the committee, to which such matter has been submitted, shall notify the Chairman of the committee having jurisdiction, who shall thereupon call a meeting of his committee to consider the matter.

SECTION 6. The members of each voting section, in each district where such section has members, shall elect from their number one or more members of a Grievance Committee, to which shall be referred all grievances of members of such section. Such Grievance Committee shall investigate and attempt to satisfactorily adjust all matters referred to it in writing by any member of such section. It shall then report, in writing, to the Division Committee the facts developed, and the results obtained. If the matter has not been satisfactorily adjusted, the Committee shall attempt to adjust the matter with the head of the division or department of the Company. Failing satisfactory adjustment, any such matter shall then be referred by such Committee to the General Committee of the Organization, which shall hear evidence from the Grievance Committee, originally investigating the matter, and decide whether any further action shall be taken. If it is determined that the matter has not been satisfactorily adjusted, then the General Committee will negotiate with the proper executive officers of the Company, seeking a satisfactory adjustment.

ARTICLE VIII.—AMENDMENTS

Any provision of this constitution may be amended, altered, or repealed by a majority vote of the General Committee of the Organization, submitting such amendment to all of the members who shall vote for or against the same in the same manner as is provided for the election of representatives to the Division Committee. A majority vote of all the members of the Organization shall be required in order to ratify any amendment.

5514 BYLAWS OF THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF VIRGINIA ELECTRIC AND POWER COMPANY

ARTICLE 1.—PROCEDURE FOR NOMINATIONS AND ELECTIONS

SECTION 1. At least three days prior to the date (provided for in Section 2 hereof) for the posting of the Notice of Nomination and Election, the Chairman of each Division Committee shall appoint, for each voting section (which is to hold an election) of such committee and from among the members of such voting section, an adequate number of Inspectors of Election.

In the first election to be held, the representative of such voting section on the temporary committee of employees, hereinafter referred to as "steering committee," shall appoint such Inspectors of Election who shall act in the same manner and have the same powers as Inspectors of Election appointed by Chairmen of Division Committees.

SECTION 2. At least two weeks prior to the date of the holding of such election of Division Committee representatives, the Secretary of such Committee shall prepare and cause the Inspectors of Election of such voting sections to post (at a convenient place or places where the same may readily come to the note of the members concerned) a Notice substantially in the form hereto attached, marked "Notice of Nomination and Election," and shall furnish for the use of such members an adequate number of blank Nomination Ballots substantially in the form hereto attached, marked "Nomination Ballot," together with the envelopes in said form referred to. The instructions to voters contained in said form of Nomination Ballot are hereby made part of this procedure. The steering committee shall furnish such notices and blank ballots for the first election.

SECTION 3. The voting for nominees shall take place upon a date to be specified in the Notice of Nomination and Election not later than two weeks after the posting of such notice. The nomination ballots shall be deposited and counted in the same manner, so far as may be, as prescribed by Section 6 hereof. In the
5515 first, second, and fourth divisions, the members of voting sections in the Norfolk Division shall vote separately from the members of such voting sections in the Richmond Division, and shall be entitled to vote only for representatives from that part of his voting section in the division of the Company where he is employed. A member of a voting section may write on his nomination Ballot the names of two members of such voting section who are employed in the same division of the Company with him. In the first, second, and fourth divisions, the two

members of each voting section from the Norfolk division receiving the largest number of votes, and the two members of such section from the Richmond division receiving the largest number of votes, and in the third division the two members of each voting section receiving the largest number of votes, shall be declared and certified to the Secretary of the proper Division Committee by the Inspectors of Election for the voting section to have been selected as and to be the nominees of such voting section. The two nominees of the members of a voting section in the Norfolk division of the Company shall be voted on by the members of the voting section in that division, and the two nominees of the members of a voting section in the Richmond division of the Company shall be voted on by the members of the voting section in that division. In the first election held hereunder the steering committee shall certify all nominees.

SECTION 4. The Inspectors of Election of a voting section shall, promptly after ascertaining and declaring the nominees for such voting section, post a list of such nominees at the place or places where the Notice of Nomination and Election was posted.

Any Inspector of Election, upon being selected as and declared a nominee, shall be disqualified thereafter to act as Inspector of Election at such election of employee representatives, and the Chairman of the Division Committee may appoint another as Inspector of Election in his place. In the first election held hereunder the new appointment shall be made just as the original appointment was made.

SECTION 5. The Secretary of the Division Committee
5516 shall furnish for all members of a voting section, Election Ballots substantially in the form attached hereto, marked "Election Ballot," together with the envelopes in said form referred to. The instructions to voters contained in said form of Election Ballot are hereby made part of this procedure. For the first election such ballots shall be furnished by the steering committee.

SECTION 6. The Election Ballots shall be deposited in the sealed Ballot Box to be provided by and to be in the sole custody and safekeeping of the Inspectors of Election for each voting section. Within twenty-four hours after the time for voting has expired, such Inspectors of Election shall open the Ballot Box and verify the voting qualifications of every person voting and that not more than one ballot was cast by a voter. The election ballot of any person found to be not properly qualified to vote and all ballots of any voter casting more than one ballot shall remain unopened (both outer and inner envelope) and be rejected and endorsed accordingly on the outer envelope by the Inspectors of

Election. After verification, as aforesaid, the outer envelope of all election ballots properly cast shall be opened and the plain sealed envelope taken out but not opened. After all such plain sealed envelopes have been so taken out, they shall be thoroughly shuffled and shall then be opened, one at a time, and the votes of the ballot entered upon tally sheets by the Inspectors of Election before the next envelope is opened and votes are counted. If an election ballot be incorrectly or insufficiently marked, but in the judgment of Inspectors of Election the voter's intention is evident, the votes shall be counted in conformity with such evident intention.

The results of the election shall then be certified to by the Inspectors of Election to the Secretary of the Division Committee, and a copy or copies thereof shall forthwith be posted by them at the same place or places that the Notice of Nomination and Election was posted. In the first election the steering committee shall be notified of the results of the election and given written notice to those elected.

5517 SECTION 7. In the event that but one or more persons, out of a larger number receiving a tie vote, can be declared to be elected, the election shall be determined as between such persons by seniority of continuous service with the Company.

SECTION 8. No immaterial variance of the forms or procedure herein prescribed shall invalidate any proceedings hereunder.

SECTION 9. Special Elections shall be conducted in substantially the same manner as regular elections, under the supervision of Inspectors of Election, appointed by the Chairman of the division committee. The division committee shall prepare appropriate ballots and furnish the same for the use of the members at such special election and thereafter the procedure shall be substantially the same as in regular elections.

SECTION 10. The number of members of the Grievance Committee in each district of each voting section shall be fixed by the division committee to which such voting section belongs; in the first elections such number shall be fixed by the appropriate steering committee. The members in each district of each voting section shall vote only for the members of the Grievance Committee to represent his district of his voting section.

SECTION 11. The procedure for the nomination and election of members of the several grievance committees shall be the same as provided for the nomination and election of representatives to the several division committees, and appropriate blank ballots shall be furnished for the use of members by the several division committees.

* * * * *

The form of Notice of Nomination and Election shall be as follows:

NOTICE OF NOMINATION AND ELECTION

To the Voter Employees of the ---------- Committee ----------
Voting Section:

5518 Voting for Nominees

Notice is hereby given that there will be a voting on ----------, the ---------- day of ----------, 19----, for ---------- Nominees for the coming election of representatives of the above voting section of this committee.

Every member of the above voting section may vote for ------ members of said voting section in his division of the Company as Nominees for Election, on a Nomination Ballot which will be available on or before the voting day. A list of the persons so elected as Nominees will be posted promptly after such election.

Election of Representatives

Notice is further given that the election by the above voting section by secret ballot, of ---------- representatives from the Nominees selected as above, will take place on ----------, 19----.

Full instructions upon the manner of voting will be contained in the ballots which will be available on or before the election day.

The following have been appointed as Inspectors of Election for the voting and election to be held pursuant to the above Notice.

Inspectors of Election

5519 The form of Nomination Ballot shall be as follows:

Nomination ballot for ---------- nominees for Division Committee Representatives for ---------- voting section, to be held ----------, 19----, ---------- nominees (Write their surnames and initials below):

(Etc.)

Instructions to Voters

How to make nominations: Every member of the above voting section is entitled to nominate two voter employees of said voting

section for the coming election of representatives. The voter should indicate the persons he wishes to nominate by writing their last names and initials in the above space.

How to seal the ballot and deposit it: Each voter will receive a plain gummed envelope and another gummed envelope bearing spaces in which the voter must sign his full name and write the committee and voting section of which he is a member. This ballot must be placed in the plain envelope and sealed, and then placed in the other envelope (signed, etc., by the voter as above), which must then be sealed and deposited, ... sealed, in the Ballot Box.

How ballot is to be mailed or transmitted if ballot box is not readily accessible: If the voter cannot conveniently personally deposit his Ballot in the Ballot Box, he should enclose it, sealed, etc., as above, in a third plain envelope and endorse thereon the word "Ballot," and mail or otherwise transmit it to the Inspectors of Election. It shall be the duty of the Inspectors of Election, immediately, without opening, to deposit such Ballot, just as received, in the Ballot Box.

5520 The form of Election Ballot shall be, as follows:

Election Ballot

Ballot for ---------- Division

Committee Representatives

For ----------
voting section, to be held ---------- 19----.

Nominees	Vote for
----------	----------
----------	----------
----------	----------
(Etc.)	----------

Instructions to Voters

How to mark ballot: Every voter of the above voting section is entitled to vote for one representative. The voter should indicate the person he wishes to vote for by placing a cross (x) opposite his name.

How to seal the ballot and deposit it: Each voter will receive a plain gummed envelope and another gummed envelope bearing spaces in which the voter must sign his full name and write the committee and voting section of which he is a member. This ballot must be placed in the plain envelope and sealed and then placed

in the other envelope (signed, etc., by the voter, as above) which must then be sealed and deposited, so sealed, in the Ballot Box.

How ballot is to be mailed or transmitted if ballot box is not readily accessible: If the voter cannot conveniently personally deposit his Ballot in the Ballot Box, he should enclose it, sealed, etc., as above, in a third envelope and endorse thereon the word "Ballot," and mail or otherwise transmit it to the Inspectors of Election. It shall be the duty of the Inspectors of Election, immediately, without opening, to deposit such Ballot, just as received, in the Ballot Box.

ARTICLE II.—DUES

Each member of the Organization shall pay dues to the Organization in the sum of Three Dollars ($3.00) per year, payable semiannually in July and January in advance. Each member shall direct the proper disbursing officer of the Company to
5521 deduct the amount of such member's dues from his wages, and pay the same, less the employer's cost of making such deduction to the Treasurer of the Organization. Each member joining in any month other than July or January shall pay dues in advance, pro-rated on the basis of the unexpired semiannual period. Any member failing to pay the dues as required shall be dropped from the roll as a member of the Organization. An initiation fee of twenty-five cents (25¢) shall be paid by each applicant for membership along with his application.

ARTICLE III.—AMENDMENTS

Any provision of these bylaws may be amended, altered, or repealed by a two-thirds vote of all of the members of the General Committee of the Organization at two consecutive regular meetings of the Committee.

5522 *Board Exhibit 39*

RICHMOND, VIRGINIA,
June 14, 1937.

Mr. P. R. WILLIAMS,
Comptroller, Virginia Electric & Power Co.,
Richmond, Virginia.

DEAR SIR: In behalf of the Steering Committee for the Richmond Division of a proposed organization of the employees of the Virginia Electric & Power Co., I wish to request that you submit to me the following information:

1. A detail by departments, and by any subdivisions thereof, of the names of the "worker personnel" in the Norfolk and the Richmond-Carolina Divisions of the Virginia Electric & Power Co.

2. This detail to include the Electric, Gas, Transportation, General Sales, and General Accounting Departments and office employees generally.

3. The term "worker personnel" is meant to signify all employees of the Virginia Electric & Power Co. below the rank of foreman or supervisor, or who in general are not authorized by the Virginia Electric & Power Co. to issue orders or directions in their own names to other Virginia Electric & Power Co. employees.

4. This information is to be used as a basis for establishing a system of representation for the proposed organization.

5. This information should be in the hands of the Secretary at the earliest possible date; preferably by Tuesday noon, as the Committee organizing this association of employees will need this information for a meeting to be held Tuesday evening, June 15.

5523 6. If the information in the form requested cannot be assembled by Tuesday noon, the following information can be used as a temporary substitute:

7. A statement of the number of workers in the six groups specified in Paragraph 2 for the two divisions of the Company and broken down into the various district offices of the Company. This statement also should show these numbers in terms of the principal operating departments within each of the six groups; for example, the Overhead Lines Department and the Meter Department.

8. If the information in the form requested in Paragraph 7 cannot be supplied by Tuesday noon, will you kindly so advise the Secretary at once and discuss with him the nature of employee statistics that could be assembled by that time?

9. It is understood by the Steering Committee that the Virginia Electric & Power Co. is to be reimbursed for any expense incurred in assembling this information.

I thank you for your cooperation in this important matter.

Very truly yours,

ARTHUR D. BERTOLETT,
Secretary.

Approved:

EUGENE T. UNDERWOOD,
Chairman, Steering Committee for the Richmond Division for the Proposed Independent Organization of Employees of The Virginia Electric & Power Co.

5524 *Board Exhibit 40–A*

VIRGINIA ELECTRIC AND POWER COMPANY,
Richmond, Virginia, June 15, 1937.

MR. ARTHUR D. BERTOLETT,
Secretary, Steering Committee, Richmond Division, Independent Organization of Employees of the Virginia Electric & Power Co.,
Richmond, Virginia.

DEAR SIR: We wish to acknowledge your memorandum dated June 14, 1937. This memorandum was not received by us until this morning and we are unable to furnish the information as requested because of the great detail necessary.

However, we are furnishing a statement showing the estimated total number of employees by departments who are not in a supervisory capacity.

The detail statement requested by your committee will be sent just as soon as it can be prepared.

Yours very truly,

P. R. WILLIAMS,
P. R. Williams,
Comptroller.

5525 *Board Exhibit 40–B*

VIRGINIA ELECTRIC AND POWER COMPANY, JUNE 15, 1937

EMPLOYEES NOT IN A SUPERVISORY CAPACITY

RICHMOND

	Employees	
Transportation:		
Railway Operators	233	
Bus Operators	199	
Shops	221	
Track	74	
		727
Electric:		
Distribution	283	
Production	205	
		488
General Office:		
Accounting	179	
Sales	55	
Other	246	
		470
		1,685

NORFOLK

	Employees	
Transportation:		
Railway Operators	117	
Bus Operators	238	
Shops	155	
Track	38	
		548
Electric:		
Distribution	233	
Production	110	
		343
General Office:		
Accounting	125	
Sales	40	
Other	128	
		293
Gas		126
		1,310
		2,995
Transmission		14
		3,009

5526 *Board Exhibit 41*

VIRGINIA ELECTRIC AND POWER COMPANY.
Richmond, Virginia, October 28, 1937.

BULLETIN TO ALL EMPLOYEES

We wish to call to the attention of all employees the following clause in the contract between Virginia Electric and Power Company and the Independent Organization of Employees of Virginia Electric and Power Company dated August 5, 1937:

"1. Membership as a Condition of employment

"All present, regular, and temporary employees of the Employer, except temporary employees on construction jobs, and all future employees, except temporary employees on construction jobs, who shall have been in the employment of the Employer for at least ninety days and who hold positions below the grade of foreman or below a similar grade (confidential secretaries and part-time employees excepted), are eligible to membership in the Employee Organization.

"During the term of this agreement, the Employer hereby agrees not to retain in its employment for a period of more than ninety days after the date of this agreement any employee eligible for membership in the Employee Organization, unless such employee is a member of the Employee Organization. The Employee Organization agrees to furnish to the Employer within

five days after the signing of this agreement a complete list of all members of the Employee Organization and thereafter to keep said membership roll so furnished to the Employer currently up to date.

"Nothing contained in this agreement shall prevent or in any wise affect the right of any employee to join or remain a member of any other labor organization."

The Ninty-day period expires at midnight, Wednesday, November 3, 1937, after which all employees, eligible for membership in accordance with the contract must be members of the Independent Organization of Employees of Virginia Electric and Power Company.

J. G. HOLTZCLAW,
J. G. Holtzclaw,
President.

5527 *Board Exhibit 51*

INDEPENDENT ORGANIZATION OF EMPLOYEES OF V. E. & P. CO.

INTERDEPARTMENTAL CORRESPONDENCE

Date October 27, 1937.

From Mr. A. D. Bertolett.
To Mr. L. H. Walsh.

DEAR LEO: I wish to acknowledge your letter enclosing expense account for Mr. Cartledge; also your letter with reference to providing grievance men with copies of the Constitution and By-Laws, and copies of the Contract.

Have turned over expense account of Cartledge for payment, and am forwarding under separate cover sixty copies of the Constitution and By-Laws which should provide one copy each for each of your grievance men.

Have not planned to send out any additional copies of the contract until we straighten out with the Company various questions in the Supplemental Contract. If, however, your men insist on having copies of those portions of the contract which concern them, and you agree that it is worth the trouble cutting the stencils and printing the sections of the contract as it is now written, I shall be glad to do so.

If, however, there are to be any changes through the Supplemental Contract it would mean two separate pieces of work to print up the present contract and then to go ahead and print up the revised contract. For the sake of saving us a lot of work I hope you can use your influence to hold this demand for copy of the contract until we straighten ourselves with the Company.

And lest you forget, please send me all possible membership cards just as fast as you can possibly get them in. The Company is on my neck to get the eligibles, who will sign, in the fold.

Very truly yours,

A. D. BERTOLETT,
A. D. Bertolett,
General Secretary.

ADB/A.

5528 *Board Exhibit 53*

VIRGINIA ELECTRIC AND POWER COMPANY,
Richmond, Virginia, August 20, 1937.

MR. EUGENE T. UNDERWOOD,
Chairman, Independent Organization of Employees, Virginia Electric and Power Company, 401 East Franklin Street, Richmond, Virginia.

DEAR SIR: We are enclosing our check in the amount of $3,784.50, representing dues for one-half year, ending 12-31-37, of 2,523 employees of the Company who according to the statements recently furnished us are members of the Independent Organization of Employees of Virginia Electric and Power Company.

We are arranging to have pay roll deductions made during the month of August from the pay checks of the employees involved.

Very truly yours,

P. R. WILLIAMS, *Comptroller.*

Enclosure.

Copy—Original attached to J. E. 19. Deposited 8/23/37. ETU.

5529 *Respondent's Exhibit 7*

VIRGINIA ELECTRIC AND POWER COMPANY,
Richmond, Virginia, June 24, 1937.

Who said anything about a job in N. C.? It's news to me too. Bob Elliott.

BULLETIN TO EMPLOYEES

In the Richmond Times Dispatch of June 24th, there appears a statement attributed to Robert Elliott, a bus operator in the employ of this Company in the Norfolk Transportation Department, in which he charges that "he had been offered a job in North Carolina with a salary of $350.00 a month to turn over his organization to the Company and leave Norfolk."

Although the statement does not specifically say so, and truthfully cannot, the implication seems to be that this offer was made

by the Company. To counteract any such implication, this Company and its officers wish at once to deny emphatically ever making any such offer or suggestion to Mr. Elliott or any other employee, and to state furthermore that they have no knowledge whatsoever of any such offer.

Employees of Virginia Electric and Power Company have a right to self-organization, to form, join or assist labor organizations and to bargain collectively through representatives of their own choosing, and the Company has not sought and does not seek to dominate or interfere with employees in the exercise of any of their rights, individually or collectively.

J. G. HOLTZCLAW,
President.

5530 *Respondent's Exhibit 9*

VIRGINIA ELECTRIC AND POWER COMPANY.
Norfolk, Virginia, November 4, 1937.

BULLETIN TO ALL PRESENT AND FUTURE EMPLOYEES

We wish to call to the attention of all employees the following clause in the contract between Virginia Electric and Power Company and the Independent Organization of Employees of Virginia Electric and Power Company dated August 5, 1937:

"1. Membership as a Condition of Employment

"All present, regular, and temporary employees of the Employer, except temporary employees on construction jobs, and all future employees, except temporary employees on construction jobs, who shall have been in the employment of the Employer for at least ninety days and who hold positions below the grade of foremen or below a similar grade (confidential secretaries and part-time employees excepted), are eligible to membership in the Employee Organization.

"During the term of this agreement, the Employer hereby agrees not to retain in its employment for a period of more than ninety days after the date of this agreement any employee eligible for membership in the Employee Organization, unless such employee is a member of the Employee Organization. The Employee Organization agrees to furnish to the Employer within five days after the signing of this agreement a complete list of all members of the Employee Organization and thereafter to keep said membership roll so furnished to the Employer currently up to date.

"Nothing contained in this agreement shall prevent or in any wise affect the right of any employee to join or remain a member or any other labor organization."

(Signed) J. G. HOLTZCLAW.
President.

5533 *Respondent's Exhibit 11*

[Virginian Pilot, May 28, 1937]

NEW VEPCO UNION TO BE INDEPENDENT—NOT TO AFFILIATE WITH C. I. O. OR A. F. OF L., SAYS LEADER

MOVE IS STATEWIDE—ALL DEPARTMENTS TO BE INCLUDED: MORE PAY AND SHORTER HOURS SOUGHT

Employees of the Virginia Electric and Power Company, who plan to organize under the provisions of the Wagner Labor Act, will not affiliate with either the American Federation of Labor or the C. I. O., dominated by John L. Lewis, it was decided at two meetings of motormen and bus operators yesterday in the company's Y. M. C. A. on Eighteenth street.

One meeting at 11 a. m. was attended by 125 men and another at 4:30 p. m. had approximately 150 present. Robert E. Elliott, Jr., chairman of a general committee named to arrange the preliminary plans for the organization, presided at both meetings. This morning at 10 o'clock and again this afternoon at 6 o'clock employes of the company in Portsmouth will hold meetings and Mr. Elliott will attend each meeting and explain the progress already made in efforts to form the organization.

Mr. Elliott said last night that employees of the Virginia Electric and Power Company all through Virginia—Richmond, Petersburg and several other places—already have plans well under way for joining the proposed organizations. He said in the Virginia division of the company there are approximately 3,400 employes, and within 30 days it is anticipated that the proposed organization will have signed up 3,000 persons as members.

ALL DEPARTMENTS

"We hope to take in all departments," he said. "We already have held elections to select representatives from all departments to form a general committee for the purpose of conducting collective bargaining proceedings with officials of the company.

"There will be from one to four representatives from each department. Tomorrow (meaning today) there will be held a formal election in the car barns on Eighteenth street for the purpose of selecting representatives of carmen and bus operators to that committee.

Mr. Elliott put at rest reports that it was the purpose of the proposed organization to abolish the seniority system now in vogue throughout the Virginia division of the company. Under this system men who have been with the company for years are given preference in the selection of bus and trolley runs. In most cases the older men are permitted to select their own runs.

Mr. Elliott said not only will the seniority system prevail but the organization will embody in its bylaws a guarantee that men who have given years of their lives to the service of the company are entitled to and shall receive preference in assigning of trolley and bus runs and all other privileges to which they are entitled.

Ask Pay Increases

He stated that the motormen and bus operators would ask for an increase in wages from 53 cents an hour to 75 cents an hour and for an eight-hour day. They also will request 25 minutes lunch-time, the time to be included in their eight-hour schedule and not to be deducted from their pay.

Employes of other departments also will request a wage increase and an eight-hour day.

Next Tuesday night there is to be a mass meeting of all employes of the company in Norfolk at which final plans for the formation of the new organization will be presented for adoption. Similiar meetings will be held in Richmond and Petersburg. This meeting is to be held in the Virginia Electric and Power Company building on Bute street.

Mr. Elliott stated that the Wagner Act provides that preliminary meetings can be held on company's property with the consent of officials, but after the organization has been perfected future meetings are to be held off the property of employers.

There are employed in Norfolk by the Virginia Electric and Power Company about 1,500 persons and in Portsmouth about 800, it was stated by Mr. Elliott.

Besides Mr. Elliott, members of the committee arranging the preliminary plans of the proposed organization are J. D. King, M. D. Hugh, M. F. Teban, M. D. Slaughter and A. Ruett.

5554 [Virginian Pilot, May 29, 1937]

VEP Employes in Portsmouth For New Union

Car and bus operators favor organizing for collective bargaining

Trolley car and bus operators employed by the Virginia Electric and Power Company in Portsmouth held two meetings yesterday and voted unanimously in favor of forming an organiza-

tion or union in accordance with provisions of the Wagner Labor Act. R. E. Elliott, Jr., general chairman of a committee arranging preliminary plans for organizing the employes, said last night.

In Norfolk 257 out of a possible 259 car and bus operators voted, it was announced, at an all-day election for the selection of a committee of four which is to represent their section of the organization in collective bargaining with officials of the company for an increase in wages, an eight-hour day with 25 minutes for lunch, the time not to be deducted by the company.

The committee is composed of Mr. Elliott, M. D. Hough, R. J. Ruett and J. D. King.

Mr. Elliott said last night that he had traveled to various sections of Virginia where the VEP has employes and the sentiment in favor of the proposed organization is "practically 100 per cent."

WANT INCREASED WAGES

He said the company will be asked to pay trolley car motormen and bus operators in Norfolk, Portsmouth, Richmond and Petersburg, 75 cents an hour instead of 53 cents, the prevailing wage.

Mr. Elliott said the proposed organization will not be a company union in any sense of the word.

"It will be an independent organization not allied with either the American Federation of Labor or the CIO," he said. "If a majority of the members decide later on, after the organization is formed and in working order, to affiliate with outside unions it can be done because there will be nothing in the by-laws to prohibit such affiliations.

"The only outside connections we are seeking is the protection and assistance of the National Labor Relations Board and the U. S. Department of Labor."

Mr. Elliot stated that under no circumstances will the union accept assistance or financial aid from the Virginia Electric and Power Company. He said that although he believes the company will be more considerate of the aims and purposes of the organization, he desires it be *to* "clearly understood" that neither he nor any other member of the committee have received any outside pay for their work so far other than in their regular line of duty as employes of the power company.

Employes of the electric and gas departments, car barns and repair shops will be members of the union, and will ask for improved working conditions and increases in pay where it is thought such increases should be made, Elliott said.

Mr. Elliott stated each request would have the support of the entire organization and contracts would be sought which would

guarantee the conditions asked for a period of one year. Before the expiration of 30 days, he said, practically every one of 3,400 men and women employed by the company in its Virginia Division will be enrolled as members of the new union.

Next Tuesday night in the assembly hall of the Electric Building at Bute and Boush streets, there will be a meeting of the collective bargaining committee from all departments of the company in Norfolk and Portsmouth. This committee will adopt a constitution and by-laws and a name for the new organization and present them to the entire membership later in the week.

5235 [Richmond Times-Dispatch, Sunday, May 30, 1937]

Vepco Workers Vote to Form Union Here

Employees of the Virginia Electric and Power Company in the Richmond area have voted overwhelmingly to form an independent workers' organization for the purpose of collective bargaining.

This was disclosed yesterday by Walter E. Holtzback who has been chosen general chairman of the workers group representing approximately 2 000 men and women, including Negroes, employed by Vepco in Richmond and vicinity.

The Richmond group is the largest among those formed last week, or to be formed shortly, among the company's employees in the several communities where it operates.

Claims Large Sign-Up

Mr. Holtzback, who is a clerk in the general office here, said that at meetings held last week by workers in nine departments, 95 percent signed cards indicating they favored such an organization and that the others "were on the fence." He expected that practically all of the employees eligible for membership in the organization under the provisions of the Wagner Labor Relations Act would enroll before the union was established.

But "union," he explained, was not the proper term. Rather, he said, the organization would be in the nature of a works council, similar to the one recently formed at the duPont rayon and cellophane plants by 93 percent of the employees there.

Mr. Holtzback denied it would be in any sense a company union or that it was inspired by the Vepco movement. Jack G. Holtzclaw, president of the company, reiterated yesterday that he knows nothing about the employees' organization, but added that if the workers chose to organize they had such a right under the Wagner act. The company, he stated, would make no effort to stop them.

The organization will not affiliate with either the American Federation of Labor or the Committee of Industrial Organization,

Mr. Holtzback said, because the employees feel they can reach an equitable agreement without outside help. M. E. Wash, chairman of the bus and railway drivers group, largest unit in the nine departments organized, asserted yesterday that the decision to establish an independent organization was influenced by the number of Vepco employees who "were associated with A. F. of L. unions and who had had unsatisfactory treatment from this international."

Mr. Holtzback, however, said he would not subscribe to this explanation. "We simply believe, he said, that we can get along without assistance."

The nine departments organized, Mr. Holtzback said were bus and railway, lines, meter, power house, shop, accounting, stenographic, sales, and the Negro laborers.

5536 [Virginian Pilot, June 2, 1937]

CONSTITUTION IS READY FOR VEP UNION—VOTE ON ADOPTION POSTPONED, HOWEVER, AT MEETING LAST NIGHT

PURPOSE EXPLAINED—TWO DIVISIONS WITH FULL-TIME "DIRECTOR" AS CHIEF AMONG PROPOSALS

A group of approximately 100 employes of the Virginia Electric & Power Company, representing practically every employe of that corporation, met last night to consider the adoption of a constitution for a proposed organization or union, and decided to defer action until it had been read by employes of all departments.

The meeting was held in the assembly room in the VEP Co. building at Bute and Boush streets. Jack Nicholson, of the collections department, was chairman. R. E. Elliott, Jr., chairman of a general committee that laid the plans for the proposed organization, explained its purposes and also read the constitution, section by section. The proposed constitution provides that the organization shall be known as the "Employes Association of Committees." It will be divided into two sections or divisions—one for the Norfolk Division and one for the Richmond Division.

The Norfolk Division would take in all the territory in the Tidewater area, such as Portsmouth, Virginia Beach, Ocean View, and outlying territory. The Richmond Division would include the capital city, Petersburg, and all outlying territory in that particular area.

It is proposed that the chief officer of the association be known as "director" and he shall hold office until "removed by due process of law." He is to be elected by a board of directors to be composed of representatives from all departments of the power com-

pany. Each department would be known as a unit and be entitled to one representative for every 100 employes or fraction thereof. It was estimated that there would be 30 members of the committee from Norfolk and about 10 from Portsmouth.

The Norfolk Division of the organization would have a president and secretary and the Richmond Division similar offices. Each division would handle its own routine matters but the entire organization would act as a unit on questions of procuring wage increases, improved working conditions, and an eight-hour day, etc.

The constitution provides that while it is the purpose of the organization to be peaceful and cooperative with employers, there shall be nothing to prevent any group of employes from any department from going on strike.

Mr. Elliott explained that his committee which drafted the proposed constitution, decided it would be best for the organization to elect a "director" to actually direct its affairs rather than a president who could be changed from time to time by a vote of a majority of the union.

"We did not think it advisable to put a time limit on the term of office the 'director' could serve because we want a man who cannot be handled by politics or other influences," he said.

The "director" is given wide powers. He can bring charges against any members of the directors who does not "do his duty" as he thinks it should be done. He can suspend any member of the committee pending the disposition of charges preferred by him. He is to preside over all joint meetings of the Norfolk and Richmond Divisions. He is to receive a salary, although the amount to be paid him is not stipulated in the proposed constitution.

It had been proposed to adopt the constitution last night but representatives of various departments of the company apparently were in the majority and a motion to have copies printed and distributed among employes prevailed.

It is proposed to call another meeting of department representatives in about a week, when final action on the adoption or rejection of the constitution or any section therein, will be taken. There appeared to be some opposition to naming a "director" for an unspecified term. Several men at the meeting wanted to know if he was to have a "lifetime job."

A meeting of Richmond employes was supposed to have been held last night in Richmond.

After the Norfolk meeting copies of a membership blank were distributed among those present. Some of them were signed. Practically all employes are to receive copies during the next few days.

5537 [Virginian Pilot, June 9, 1937]

VEP Employes Will Organize Norfolk Union

LABOR BOARD ASKED TO RULE IF UNIT HERE CAN NOT UNITE UNDER WAGNER ACT

Unless the National Labor Relations Board rules otherwise motormen and bus operators employed by the Virginia Electric and Power Company in Norfolk will organize a union, it was announced las. night by R. E. Elliott, Jr., chairman of a committee appointed some time ago for that purpose.

Elliott said last night that so far as the Norfolk employes are concerned, they have abandoned the idea of organizing all over the VEP Company division, which includes Portsmouth, Suffolk, Richmond, and Petersburg and other sections of Virginia.

"Employes in other cities can organize their own unions if they choose," said Mr. Elliott. "We, in Norfolk, will have our own union if the Labor Board says we can organize without having to obtain the consent of workers all over the division.

"This question already has been referred to the National Labor Relations Board through the law firm of Breeden & Hoffman and we expect a ruling today. We will hold a meeting this morning at 11 o'clock at the Y. M. C. A. on Eighteenth street. At this meeting we hope to obtain the signatures of a majority of the men employed on cars and buses and in the repair shops.

For One Department

"Our union will be for men of the transportation department but employes of other departments may join if they wish.

"Since we started the movement to organize there have been a succession of meetings for the purpose of adopting a constitution and by-laws and electing officers. Even though the original committee named to organize a union has had a number of setbacks in keeping out from leadership employes who seem to have been taking orders from their bosses, we have in no way slackened our efforts. We will keep the union free from company rule or dictatorship.

"Up until a few months ago motormen and bus operators received 50 cents an hour. When the wave of labor organizing began to sweep the country, we received an increase of 3 cents an hour. It was believed that this increase was given us in order to keep the men from being dissatisfied with their pay.

"We have made a survey of conditions in other cities and we find that men doing the work we are doing are paid 90 cents an hour in

most places. In Detroit, car and bus operators receive 93 cents an hour. In Boston they earn up to 90 cents and as far south as Atlanta car and bus operators receive pay that is in the same category."

Want 75 Cents an Hour

Mr. Elliott said car and bus operators in Norfolk already have asked for 75 cents an hour but it was refused by the company because there was no union and the right of those making the request was questioned because they did not have the authority to negotiate collective bargaining agreements as provided under the Wagner labor act.

"The wage we are asking is even where car and bus fare is nearly half what it is in Norfolk," said Mr. Elliott.

"The cost of living is high and going higher. It is only fair to the men that we strive to obtain an increase in wages in order to provide us with the means of making a living for our families.

"Whatever the ruling may be by the Labor Board it will be of great importance to the car and bus operators and working men of Norfolk. If the ruling is to the effect that the transportation department does, in itself, constitute a unit appropriate for collective bargaining under the Wagner labor act, then the car and bus operators and mechanics in the repair shops will have the board's backing to accept no less than 75 cents an hour regardless of what is accepted by employes of other departments and other divisions."

3539 [Ledger Dispatch, June 11, 1937]

V. E. P. Group Meets Tonight

STEERING COMMITTEE WILL DISCUSS COLLECTIVE BARGAINING SET-UP—EMPLOYEES TO VOTE ON CONSTITUTION

A steering committee appointed to lay plans for a collective bargaining organization of the Norfolk division of the Virginia Electric and Power Company will meet tonight to discuss in detail a proposed constitution and by-laws, Damon M. Tatem, chairman, announced today.

He said the committee hopes to have its organization completed within the next week, since every department in the Norfolk and Richmond divisions, with one possible exception, are behind the proposed setup.

Although Mr. Tatem did not mention any department specifically, it is understood that the transportation department is the one referred to, since a faction led by R. E. Elliott, Jr., has moved

toward the formation of an independent union of bus operators and street car motormen.

Mr. Tatem said that at a meeting in Petersburg on June 3 of representatives elected from the various departments of the Norfolk and Richmond divisions of the company, including the Norfolk transportation department, it was agreed that a lawyer be engaged to draw up a constitution and by-laws governing the organization of a bargaining committee for employees of the entire Virginia Electric and Power Company.

He said it was further agreed that no publicity be given until such time as an organization should be set up. The tentative constitution, when submitted, he said, was to be voted on by employees.

The constitution has now been received and will be discussed tonight at the meeting of the steering committee of the Norfolk divisions, including Portsmouth and Suffolk. Copies will be sent to various departments for their discussion and vote.

5540 [Ledger Dispatch, June 16, 1937]

Latest developments in the labor battle along local fronts today were:

The arrival of two C. I. O. organizers with the avowed intention of organizing all types of unorganized labor under the Lewis banner.

The C. I. O. organizers—F. M. Crum, of Cleveland, and Ray Thomason, of Richmond—are concentrating their efforts now in an attempt to sign up Virginia Electric and Power Company workers.

For some time efforts have been under way to organize these workers in a union with no national affiliation.

5541 [Virginian-Pilot, June 17, 1937]

R. E. Elliott, Jr., the leading spirit in the plan to organize employees of the Virginia Electric and Power Company, said he had conferred with Crum but there was little chance of V. E. P. men affiliating with the C. I. O.

"We are organizing an independent organization," Mr. Elliott said. "The organization will be composed of members all over the VEP division, Norfolk, Portsmouth, Richmond, Petersburg, and in other sections of Virginia.

"The Transportation Department agreed to come into the division-wide organization when it was assured that the new union would not be dominated by company officials.

"The constitution of the proposed union provides that officials of the company shall have nothing to do with it and that appears to be satisfactory to everybody concerned.

"I do not believe our organization will affiliate with the C. I. O. or the A. F. of L. The men appear to prefer an independent organization with no strings on it and without obligations that come with affiliating pledges with national or international unions."

Mr. Elliott said a meeting of the new organization will be held in a few days when officers probably will be elected and the constitution and bylaws adopted.

5543 [Richmond Times-Dispatch, Thursday, June 24, 1937]

Ray Thomason, C. I. O. field representative, last night charged the Virginia Electric and Power Company with attempting to organize a company union in defiance of the national labor relations act. He is gathering evidence, he said, "to present this flagrant violation of the law before the Wagner Labor Board in Washington immediately."

New Union Affected

Mr. Thomason said the power company had attempted to take over an independent union of bus drivers, streetcar operators, and shopmen organized in Norfolk by Robert Elliott, of that city. He said he was present at a meeting last night of some 300 Vepco employees "mostly office workers" in Norfolk where a constitution and bylaws of the Independent Organization of Employees of the Virginia Electric and Power Company were presented but not voted on.

At this meeting, Thomason said, Mr. Elliott charged he had been offered a job in North Carolina with a salary of $350 a month to "turn over his organization to the company and leave Norfolk."

Mr. Elliott, he said, "told the meeting he replied to this offer that he would not betray the confidence the men placed in him when he formed the union and rejected the offer." He said Mr. Elliott signed a C. I. O. card immediately after his public statement.

Thomason displayed an application blank which he said was presented to Vepco employees at their work. The blank contained a membership application and authority to the company to pay to the treasurer of the Independent Organization of Employees $3 annually for dues "less the cost of making such deduction" and to take $3 annually from the employee's wages.

5550 *Respondent's Exhibit 13–A*

WHITE & TEMPLE,
UNION TRUST BUILDING,
Petersburg, Va., July 27, 1937.

T. JUSTIN MOORE, Esq.,
Attorney at Law,
Electric Building, Richmond, Virginia.

DEAR MR. MOORE: In conformity with your request I am enclosing a copy of the constitution and by laws of the Independent Organization of Employees of Virginia Electric and Power Company. I also enclose a statement showing the number of members of the Organization classified by departments.

The Organization is really a federation of four employee units, each of which has its own committee. Each of these units or divisions is in turn subdivided into voting sections, and these voting sections are shown separately on the enclosed statement. The Organization membership has a majority of all employees in every department in every district where the Virginia Electric and Power Company operates.

I also enclose a chart which may give a clearer picture of the manner in which the Organization is set up. It is intended to protect employees doing similar work from being dominated by a larger number of employees doing different work.

Some time early in June I was retained by a committee to prepare the constitution and bylaws for an organization of employees of Virginia Electric and Power Company. There was a steering committee composed of representatives of every district in which the company operates. Separate steering committees had been appointed in Richmond and in Norfolk. On June 15, 1937, at a meeting of the Richmond steering committee attended by five members of the Norfolk steering committee, I explained the proposed constitution and bylaws, and it was adopted by the Richmond steering committee. A day or so later the Norfolk steering committee took similar action.

Membership application forms were then prepared and these have been signed by every employee joined as a member by the Organization. Naturally there was no solicitation of members on Company property. In accordance with the bylaws, nominees selected by secret ballot were submitted to the members at an election held July 12, 1937, and the present members of the Division Committees of the Organization were elected. At a meeting on July 17, 1937, attended by all the members elected
5551 to all the Division Committees, the members of the General Committee of the Organization were elected in accordance with the provisions of the constitution and by laws.

In addition to the signed membership applications, the Organization has in its possession the signed envelopes in which members enclosed their ballots when voting for representatives to their respective Division Committees. The provisions of the bylaws with respect to the nomination and election of representatives to Division Committees have been rigidly observed, and a majority of all employees of the Company below the grade of foreman, in each department in every district, participated in the voting.

Minutes have been kept of all meetings of the Norfolk and Richmond steering committees, and minutes are being kept of all meetings of the General Committee, the two Interdepartmental Committees and all Division Committees.

Voting sections in each district have held meetings of their members for the purpose of discussing the constitution and bylaws, and for the purpose of discussing demands relative to wages, hours, and working conditions. These meetings are not required by the constitution and bylaws, but an amendment to the bylaws requiring such meeting periodically has already been approved by the General Committee at one regular meeting and will probably be adopted at the next regular meeting of the General Committee.

May I say that I have been in close touch with the organization of the employee union since early in June, and I have advised the members of the two steering committees as to the action they have taken. In view of the suspicion with which an independent association of employees is almost necessarily regarded by the National Labor Relations Board, every precaution has been observed to avoid any connection whatsoever with the Company, because the employees wanted to run their own union, and manage their own affairs. For this reason the management of the Company has not been consulted about the organization or informed of the progress it was making. I believe the I. O. E. now has included in its membership over ninety percent of all employees of the Company eligible to join, and efforts are being made daily to get in the remaining employees who are eligible.

Very truly yours,

WM. EARLE WHITE.

5552 *Respondent's Exhibit 13-B*

Membership roll of the Independent Organization of Employees of Virginia Electric & Power Company compiled by voting sections in Norfolk and Richmond.

	Voting section
Transportation Shops	
Bus Operators	
Railway Operators	
Maintenance of Way	
Dist. Engineering & Installation	
Dist. Construction	
Production	
System Engineering & Operation	
Transmission	
Accounting	
Sales	
General Offices	
Gas	
Total	
Unclassified	
Grand Total	

App. E. T. UNDERWOOD, *C*

5553 *Respond*

DISCUSSION OF CONTRACT N
ORGANIZATION OF EMPOYEE
COMPANY AND VIRGINIA E

(The following discussion
finally signed.)

On Friday July 30, 1937, a
of the I. O. E. met with Com
Building at Richmond, for
agreement, the meeting havi
correspondence between Mr.
I. O. E. and Mr. J. G. Holtzc
tric and Power Company.

There were present, repres
T. Underwood, D. M. Tatem,
Horney, W. W. Faust, M. D
S. N. Woodard, and Mr. W.
the Virginia Electric and Po
claw, M. C. Smith, R. J. Th
P. R. Williams, E. S. Fitz, a

After a few brief introduc
appointed the representatives
himself, as the bargaining co
drew from the meeting, leav
the agreement. The propos

	Norfolk	Richmond	Total
	110	198	308
	171	188	359
	82	222	304
	26	64	90
	83	116	199
	101	180	281
	112	195	307
		23	23
		13	13
	102	150	252
	24	44	68
	31	76	107
	109		109
	951	1,469	2,420
		9	9
	951	1,478	2,429

A. D. BERTOLETT, *Secy.*

airman.

nt's Exhibit 14

GOTIATIONS BETWEEN INDEPENDENT
OF VIRGINIA ELECTRIC AND POWER
CTRIC AND POWER COMPANY

follows the form of agreement as

10 A. M. the negotiating committee
pany representatives in the Electric
he purpose of negotiating a labor
g been arranged through previous
Eugene Underwood, on behalf of
aw, on behalf of the Virginia Elec-

ting the I. O. E.: Messrs. Eugene
. D. Bertolett, L. H. Walsh, C. Mc-
Hough, M. E. Wash, A. L. Clark.
Earle White, Counsel; representing
er Company: Messrs. J. G. Holtz-
ockmorton, T. Norman Jones, Jr.,
d T. Justin Moore, Counsel.

ory remarks by Mr. Holtzclaw, he
f the Company present, other than
mittee for the Company and with-
g the two committees to negotiate
l, which had been submitted by

I. O. E., was followed as to sequence in the negotiation proceedings which followed.

5554 On the first portion of these negotiations, that is, that portion of the agreement containing General clauses applicable to the operation of the entire Company, the full membership of both committees remained in joint session. The initial articles, those reciting the grounds as a result of which the agreement was to be entered into, were reasonably satisfactory to the Company committee as proposed by I. O. E., and were accepted with very little discussion. Later on, however, after the committees were in accord on the major portion of the balance of the agreement, the second of these "Whereas" clauses was amended by adding to this clause, as written in the proposal, the exception: "confidential secretaries and part-time employees excepted."

Section A—Recognition was satisfactory to both parties substantially in the form suggested by I. O. E. except for 2 slight changes, to which the I. O. E. readily agreed, the first of these being the later inclusion of the exception incorporated in the previous clause relative to confidential secretaries and part-time employees; the second being, the provision applying to bulletin boards, which was changed so that the employee organization rather than having the right to use Company bulletin boards, as they had suggested, were given the right to set up bulletin boards of their own on the property of the Company for the purpose of posting notices dealing with employee organization matters.

5555 The first section following these initial clauses was the section which, as submitted in the I. O. E. proposal, provided for the so-called "closed shop." On this particular clause the two committees were completely at odds.

The Company held firmly to its position that it was unfair to include a clause which would force on any employee, whether present or future, membership in a labor organization as a condition of his employment with the Company.

The I. O. E. was equally as firm that such a condition was wholly fair, arguing in behalf of their contention that they hoped and expected to obtain for all employees, both present and future, through their organization, improvements in wages or working conditions, or both, and that each employee should by rights pay his share of all costs incurred in securing such improved working conditions or wages.

This clause was argued pro and con until lunch time at 1 o'clock, a period of approximately 2 hours, and was still undecided when the committees separated for lunch. When the committees met

again after lunch, it was suggested by Mr. Smith that since there seemed no possibility of any reasonably speedy agreement on this clause, discussion of it be discontinued for the time being until it was possible to determine if an accord could be reached on the various other points covered by the agreement proposed by I. O. E. The suggestion was agreed to by both committees and discussion of the balance of the agreement was immediately proceeded with.

Clause #2 providing for Collection of Dues by the
5556 Company upon order of the affected employees was accepted as proposed with the addition of a sentence providing that an employee could revoke in writing his authorization to the Company to deduct from his pay check whenever he might wish to do so.

Clause #3 covering Termination of Employment was accepted substantially as proposed though 2 slight modifications were inserted, the first providing that a discharged member must, if he wished to appeal through the employee organization, do so within 30 days after the date of his discharge; the second providing that any such appeal must be filed in writing.

A further provision in this clause as proposed which in effect would prohibit the Company from considering any outside talent for positions which might become vacant was eliminated by mutual consent.

The next clause in the agreement as submitted by I. O. E. covered procedure for adjusting grievances. By mutual consent, however, there was inserted ahead of this clause the clause appearing in the contract as signed covering the continuance of certain existing benefits given to the employees.

Also inserted ahead of the Grievance clause were 2 other clauses, both of which were brought back into the "General" portion of the agreement from the places in which they had previously occurred in each one of the subdivisions of the proposed agreement covering operations in the various departments.

The first of these headed "Governmental Regulation of
5557 Hours and Wages" took the place of a clause suggested by the I. O. E. which provided in effect that if the present hours of employment should be reduced for any reason the rate of pay would be automatically sufficiently increased so that no employee would receive less weekly pay than he was receiving at the time of negotiation of this contract for the number of hours which he was working at the time of this negotiation. It was mutually agreed that this clause should be modified to provide merely that in the event wages or hours as provided for in this agreement were affected by any Federal or State legislation or any

lawful order or regulation of any governmental agency, then the matters of hours of work and rates of pay should become the subject of further negotiations between the parties to the agreement.

The second of these headed "Over-time Payments" also appeared in each subdivision of the contract though it was not the same clause in each of these subdivisions. The clause covering these payments in the present contract was finally agreed upon by each of the committees negotiating the various subdivisions of the contract and was, by mutual consent, inserted in the "General" portion of the contract as a clause applicable to all departments.

The clause headed "Procedure for Adjusting Grievances" was acceptable to the Company almost exactly as written, the only changes being a few very slight changes in wording made for the purpose of clarification of the meaning.

There was also inserted as the last clause of this "General" section a clause covering Authorized Holidays.

3558 When these "General" clauses had been agreed upon, with the exception of the single clause covering "closed shop," the general committees were split up into representatives from both the I. O. E. committee and the Company committee who were to negotiate that part of the contract dealing exclusively with the Electric Department; representatives from both committees who were to negotiate that part of the contract dealing exclusively with the Transportation Department; representatives from both committees who were to negotiate that part of the contract dealing exclusively with the Gas Department; and representatives from both committees who were to negotiate that part of the contract dealing exclusively with Accounting, Sales, and General Office. These committees proceeded with their negotiations and eventually late Saturday night, after the committees had been in session from 10 o'clock Friday morning to midnight Friday night, and from 10 o'clock Saturday morning until nearly midnight Saturday night, were substantially in accord on all points proposed to be covered by the contract with the exception of the "closed shop" clause and the amount of wage increase which the I. O. E. was demanding.

With respect to the wage increase, several proposals and counterproposals had been made. The proposal for a graduated percentage increase of the character appearing in the contract as signed, had been initially made by the Company, though the initial proposal included percentage figures considerably under

3559 those appearing in the contract as executed. At this time the Company proposal was that wages be increased, in the steps incorporated in the contract as finally executed, by percent-

some suggestion which could finally be accepted as a compromise ages of 10, 7½, and 5. The I. O. E. was holding out for a flat 15 percent increase.

At this time the committees separated in an effort to work out on the points still remaining at issue. Eventually at or about midnight the committees agreed as a compromise that the "closed shop" clause should be incorporated in the contract subject to the restricting provision that "nothing contained in the agreement should prohibit or in any wise affect the right of any employee to join or remain a member of any other labor organization," and that pay increases should be computed for hourly paid employees on the basis of 15 percent increase for the first 30¢ of the then hourly wage rate; 10 percent increase for the next 30¢ or fraction thereof of the then hourly wage rate; and 5 percent increase on any excess over 60¢ per hour. For the salaried employees, the same procedure was to be followed except that each step for a salaried employee was $50 per month.

Early the next morning, Sunday, August 1, the two committees met with counsel and with stenographers present and dictated the agreement which was eventually signed. The entire day was occupied with discussion and dictation of the clauses and the agreement was put in its final form and accepted by the committee members subject, in the case of I. O. E., to confirmation of their action by their members, about midnight Sunday night.

On Thursday, August 5, the negotiating committee of
5560 the I. O. E. having received the necessary authority from their members, met with the committee of the Company and the contract was duly signed by each of the committee members on behalf of the employees and by the President on behalf of the Company.

5566 *Respondent's Exhibit 20–B*

PAY ROLL ADVICE

District, Norfolk. Department, Trans. Employed, _____. Removed, X. Transfer, _____. Change rate, _____.

Please make the following change on pay roll (weekly, semi-monthly, monthly). Effective November 4, 1937. Name, R. E. Elliott. White. From position of Bus Operator, rate .60 hr. Address, 1442 Westover Ave. Married. Dependents, 1. Bonded, yes. Date of birth, Aug. 19, 1909. Employed May 18, 1934. Date of last increase, _____. Amount, _____. Reason, Failing to comply with bulletin posted 10–28–37. E. A. Bishop, Signed Head of Department. J. Carroll.

H. L. M. Nov. 6, 1937.

5567 *Respondent's Exhibit 22*

LIST OF SECOND- AND THIRD-CLASS LINEMEN AS OF MARCH 31, 1938

NORFOLK, PORTSMOUTH AND VICINITY

Name	Date Employed	Date of Appointment as such
Lineman Second Class:		
Blount, Z	9/18/18	7/1/23
Boone, W. D	10/24/22	10/24/22
Fitzgerald, C	10/5/16	10/5/16
Gallamore, L. D	7/10/33	2/1/37
Hall, F. W	4/17/31	2/1/37
Jarrel, J. M	1/2/30	2/1/37
Judge, J. L	4/7/36	11/1/37
Smith, F. L	9/24/29	2/1/37
Wallace, C. G	3/3/31	6/1/36
Whitfield, G. A	6/16/30	2/1/37
Linemen Third Class:		
Denson, D. W	9/11/36	8/1/37
Griffith, A. B	6/17/36	8/1/37
Harrell, T. N	4/21/36	8/1/37
Howard, H. H	4/24/36	8/1/37
Johnson, J. V	4/20/36	8/1/37
Knighton, C. W	4/7/36	8/1/37
Patrick, H. I	4/22/36	8/1/37
Smith, C. R	2/3/36	8/1/37
Spruill, C. N	10/24/35	8/1/37
Ward, W. H	9/17/36	8/1/37

5569 *Respondent's Exhibit 24-B*

PAY ROLL ADVICE

District Norfolk. Department Distribution. Employed ——— Removed ——— Transfer ——— Change rate X.

Please make the following change on pay roll—weekly, semi-monthly, monthly.

Effective February 1, 1937. Name Thomas H. Harrell, Jr. White. Colored. To position of Lineman Helper. Rate 45¢ hr. From position of Lineman Helper. Rate 40¢ hr. Address 127 Orleans Circle. Married. Dependents 1. Bonded No. Date of birth 2 2 1908. Employed 4 21/36. Date of last increase ——— Amount ——— Reason Good reliable worker. W. T. Crafton, signed, head of department. W. N. Halik.

5570 *Respondent's Exhibit 24-C*

PAY ROLL ADVICE

District Norfolk. Department Distribution. Employed ——— Removed ——— Transfer ——— Change rate X.

Please make the following change on pay roll—weekly, semi-monthly, monthly.

Effective Aug. 1st, 1937. Name T. N. Harrell. White. To position of Lineman Helper. Rate 56½c hr. From position of Lineman Helper. Rate 45c hr. Address 127 Orleans Circle. Single. Reason Labor agreement. W. T. Crafton, signed head of department. W. N. Halik.

Entitled to 5c Per Hour Increase Plus 15-10-5% Increase Retroactive to June 1, 1937, on Actual Pay Received Plus Overtime Adjustments.

5571 *Respondent's Exhibit 24-D*

PAY ROLL ADVICE

District, Norfolk. Department, Distribution. Employed, ——— Removed, ——— Transfer, ——— Change rate, ——— Please make the following change on pay roll, weekly, semimonthly, monthly, effective Nov. 1, 1937. Name: Thos. N. Harrell, Jr. White. To position of 3rd-Class Lineman. Rate, 8.565 hr. From position of Temporary Roll. Rate, 8.565 hr. Employed 4-21-36. Date of last increase, ——— Amount, ——— Reason, Permanent Roll. W. B. Brown, Signed Head of Department. E. S. Fitz.

5573 *Respondent's Exhibit 25-G*

PAY ROLL ADVICE

District, Norfolk. Department, Distribution. Please make the following change on pay roll, weekly, semimonthly, monthly, effective November 4th, 1937. 8 A. M. Name: Alfred F. Staunton. White. From position of Lineman, 1st class. Rate, $.835 hr. Address: 349 W. Princess Anne Road. Single. Dependents, ——— Bonded, no. Date of birth, 12/16/1904. Employed 3/2/37. Date of last increase, ——— Amount, ——— Reason: Refusing to sign with I. O. E. W. T. Crafton, Signed Head of Department. W. N. Helik.

5574 *Respondent's Exhibit 26*

PERSONNEL RECORD

Operator, Dunbar, C. E. Address, 1707 Debree Ave. Badge Number, ——— Age, ——— Date of Birth, March 27, 1902. Rule Book, ——— Punch, ——— Appointed, 3-24-35. File Number, ——— Passed by O. L. Freeman, September 18, 1935, O. K. for Bus Operator.

Date: Mar. 11, 1936. Remarks: Discharged for staying off drunk.

PAY ROLL ADVICE

District, Norfolk. Department, Trans. Employed, ... Removed, X. Transfer, ... Change rate, ...

Please make the following change on pay roll, weekly, semi-monthly, monthly: Effective March 11, 1936. Name: Chas. E. Dunbar. White. From position of Car Operator. Married. Dependents, ... Bonded, no. Date of birth, ... Employed, ... Date of last increase, ... Amount, ... Reason, Discharged. E. A. Bishop, Signed Head of Department. J. Carroll.

3575 *Respondent's Exhibit 27*

ACCIDENT REPORT

Motorman Class No. 1775

Line: Naval Base. Norfolk, Va., Nov. 1, 1937. Operator: Robert E. Elliott. Car No. 1106. Exact time of accident: 10:50 A. M. Exact location: Pine Beach Pier. Direction of Car: East. No. of passengers on car: 2. Speed of car: still. Weather good. Condition of track good.

Names of witnesses	Addr. s	White or colored
Frank J. Williams	Portsmouth Va	White.
Oscar Jennings	Church St., Norfolk, Va	Colored.

Full statement of how accident occurred: I had just finished changing ends on my car on the Pine Beach Pier and was in front of car standing on ground after pulling trolley down. As I started to front side of car to enter same, a white woman called to me. As she walked toward me with a $20 bill she asked me to sell her a pass which I did. I turned again to enter car and as I stepped out to side of car a truck passed the door and front of car and I had to jump back quickly to avoid being hit. When I jumped back my foot slipped and I ran into the above woman and knocked her down. A man from Portsmouth helped me pick her up. She said I had bruised her shoulder and torn her new coat. She refused any aid and also refused to give her name other than as she said—"You people will hear from this."

When I jumped back and slipped I twisted my hip severely and later my leg became stiff and it was difficult for me to walk. I went to Dr. Saunders office but Dr. was not in.

During the incident, above, I dropped several books of passes and several large bills of money which I was unable to recover.

ROBERT E. ELLIOTT, JR.,
1442 Westover Ave.

5576 *Respondent's Exhibit 28*

NORFOLK, VIRGINIA.
November 26, 1937.

STATEMENT OF ROBERT E. ELLIOTT, C[illegible] OPERATOR

Wages Approximately $33.00 per week. In employ of the Company over three years the last time

On November 1st, 1937 (Monday), I was operating streetcar on the Naval Base Line. I had reached the Naval Base Pier, and was changing up. I had put up the back trolley nearest the pier from the ground and walked to the front of the car, going through the inside of the car, getting back on the ground in front of the car, pulled down the front trolley, and walked to the right corner of the car to get back to the front entrance. As I reached the corner and was about to step out, a truck, which as near as I recall looked like a dump truck came by close to the car, causing me to jump back to avoid being hit. As I did this I bumped into a woman standing in front of the car to whom I had just sold a pass. This woman was standing about four feet from me. As I bumped into this woman, she fell and I reached out to catch her. As I jumped back my foot had slipped, and in the procedure I wrenched my left hip.

I was working a swing run, and took the car back to town, and made one more trip out, and on my return was relieved by another man. I went from there to Dr. Saunders Office, but did not find him in. Dr. Saunders came to my house the next morning, as near as I can remember about lunchtime, and got me some liniment, and prescribed hot applications and rubbing with the liniment several times during the day. He came back to the house one or two more times, and then I saw him in his office one time. On the 20th, he told me that I was able to go back to work.

There were some witnesses to this occurrence, and their names were put on the original accident report. I did not get the woman's name, as she refused to give it. She was somewhat angry at the fact that I had bumped into her. She was counting her money at the time. I think I would be able to recognize her if I saw her, but she was not a regular passenger and I do not

recall having seen her before. She was a woman about 38–40 years of age; not tall, but taller than the average woman, and had a rather sharp face. She wore a dark fur-trimmed coat and black hat.

R. E. ELLIOTT.
1442 Westover Ave.

Attest:
H. E. DITTRICH.

5577 *Respondent's Exhibit 35*

DR. A. M. SAUNDERS,
SUITE 315 TAYLOR BUILDING.
Norfolk, Virginia, November 19, 1937.

Mr. H. M. BROCKMYER,
Claim Agent, Virginia Electric and Power Co.,
Norfolk, Virginia.

DEAR SIR: Referring to the case of R. E. Elliott, age 28, married, who stated that while he was passing around corner of streetcar, putting up trolley, he lurched forward to prevent being hurt by a truck which was passing, causing him to slip backward striking and knocking down an old lady. This accident occurred, he said, on Pine Beach Pier, November 1st, 1937, at 10:50 A. M. That the lady's coat was torn and her shoulder injured and that he twisted himself so that he injured his left hip.

I saw Mr. Elliott at or about 2 P. M., on November 2nd. I examined him thoroughly, but no objective evidence of injury could be made out, his symptoms being purely subjective. He complained of soreness in the left hip bone. When seen he was fully dressed, lying across the bed following his midday meal. He was seen again the next day at about the same time. He was again fully clothed; claimed he had been downtown to some dentist to have an extraction performed. I had quite a little talk with him, and he thought he felt much better. Told him that if he had any further trouble to let me know or come to my office.

Yours very truly,

A. M. SAUNDERS.

AMS:D.

5578 *Respondent's Exhibit 36*

There are some very pertinent facts that you should have in your mind about the reasons for and the hopes of the National Industrial Recovery Act. Let me make a few of these principal facts just as clear to you as I possibly can:

1. The real purpose of the National Industrial Recovery Act is to revive trade and business.

2. It is to keep present workmen at work and to put more people back on the pay rolls from the ranks of the unemployed.

3. It is to encourage cooperation everywhere between employers and employees working in connection with the Federal Government.

4. It is to make possible the increase of very low wages, the adoption of minimum wages, and the improvement of general working conditions.

5. There is nothing in the National Industrial Recovery Act that compels or even encourages employees to join any organization.

6. It does not attempt to describe the kind of organization, if any, with which employees may or should affiliate.

7. It makes no discrimination whatever between the organized and unorganized employees, because the Government guarantees that the Codes that are set up to control industry will not discriminate against nor will they favor any claims of employees whether organized or unorganized. They will all receive equal protection and benefit.

5579 8. It is not the intent of the law that employees should pay money into any organization to secure protection. The N. R. A. officials declared on June 19th, as follows:

"Neither is it the purpose of the Administration to compel the organization of either industry or labor."

General Hugh S. Johnson, appointed by President Roosevelt to adminster this Act, made a very definite and final statement on this question. He said as follows:

"I have said this consistently and to everyone concerned, and the American Federation of Labor agrees with me, that this Administration (meaning N. R. A.) is not to be used for unionizing any industry."

The whole spirit of the Industrial Recovery Act is one of cooperation between employers and employees in their respective places in business. So far as our Company is concerned, we shall do our part to the utmost to make the application of the Recovery Act a success as far as the maintenance of fair pay and reasonable hours are concerned.

You read in the papers almost every day of the activities of organizers of the American Federation of Labor in the principal industries of the country. In this morning's issue of the Richmond Times-Dispatch, there was a story which stated that an attempt is to be made to completely organize all bituminous coal fields. The same is true for the gigantic steel industry and

5580 the automobile industry, which, for so many years, have been operated on the open shop principle. The great stumbling block in the way of a code for these industries has been Paragraph

7 (a) of the National Industrial Recovery Act which has to do with the rights of employees to organize for collective bargaining and protection. General Johnson and Mr. Donald Richberg, General Counsel of N. R. A., in view of the misunderstanding of this Section of 7 (a) prevailing throughout the country, have given out a statement concerning the interpretation of this Section, and I am going to read the statement to you, word for word, so that you will know just exactly how General Johnson, himself, interprets the section of the Act which concerns this question:

"The plain meaning of Section 7 (a) cannot be changed by any interpretation by anyone. It is the function of the Administrator and the courts to apply and to interpret the law in its administration; and no one else can assume this function and no official interpretation can be circumscribed, affected or foreclosed by anyone writing his own interpretation into any code or agreement. Such an interpretation has no place there and cannot be permitted.

"The words 'open shop' and 'closed shop' are not used in the law and cannot be written into the law.

"These words have no agreed meaning and will be erased from the dictionary of the N. R. A.

"The law requires in codes and agreements that 'employees shall have the right to organize and bargain collectively through representatives of their own choosing.'

"This can mean only one thing, which is that employees can choose anyone they desire to represent them, or they can choose to represent themselves. Employers likewise can make collective bargains with organized employees, or individual agreements with those who choose to act individually; provided, of
5581 course, that no such collective or individual agreement is in violation of any State or federal law. But neither employers or employees are required, by law, to agree to any particular contract, whether proposed as an individual or collective agreement.

"The law provides that employees shall be free from the interference, restraint or coercion of employers in the exercise of their rights established by the law. The conduct of employers which is here prohibited has been defined by the Supreme Court in the case entitled—T. & N. O. R. R. v. Brotherhood of Railway Clerks, 281 U. S. 548. The rulings of the Supreme Court lay down the law which governs the N. R. A.

"Under Section 7 (a), employers are forbidden to require 'as a condition of employment' that an employee shall either 'join a company union,' or 'refrain from joining, organizing, or assisting a labor organization of his own choosing.' The law does not prohibit the existence of a local labor organization, which may be called a company union and is composed only of the employees of one company. But it does prohibit an employer from requiring,

as a condition of employment, that any employee join a company union and it prohibits the maintenance of a company union, or any other labor organization, by the interference, restraint or coercion of an employer.

"If there is any dispute in a particular case over who are the representatives of the employees of their own choosing, the N. R. A. will offer its services to conduct an impartial investigation and, if necessary, a secret ballot to settle the question.

"The N. R. A. will not undertake in any instance to decide that a particular contract should be made, or should not be made between lawful representatives of employees and employers; or to decide that a contract which has been lawfully made should not be enforced.

"Cooperation in all industrial relations depends largely on the making and maintenance of agreements. The N. R. A. will promote and aid such cooperation."

HUGH S. JOHNSON.
DONALD R. RICHBERG.

5582 This interpretation is quite clear and indicates very definitely that employees have the right to organize in any form of organization which they see fit to join or they have a right to continue as they have in the past as free individuals coming and going about their duties without the necessity of taking orders from anyone except their immediate superiors in their company's organization.

After a company signs a code, it becomes a legal offense under the code for the employer to interfere, restrain, or to coerce employees in matters pertaining to their organization, but it would be very foolish and entirely inconsistent with the past policy of our Company's operation if I did not state definitely to our employees that it is our belief that the organization of our employees for any purpose in this Company for their protection or collective bargaining or what not is entirely unnecessary. The Company's policy in the past has been one of fairness and that policy is not going to change under the NRA or any other Act that may be passed. Our Company has dealt with all of its employees from the water boy to the president as individuals, free, white, and 21, and, in addition to this, we have tried to deal as friends in the spirit of a unified group of individuals working together for the same end. I do not know that any of our employees, whether in the Transportation Department, Electric or Gas, are the slightest bit interested in taking advantage
5583 of Section 7 (a) or of the section under our various codes.

I must admit that I have not even heard a report that our men have shown any interest in organizing for their protection or of joining any union, but I very clearly felt it my duty to tell you

and to spread the information to all of our employees that I have given you above, which can be summed up in a few words, about like this:

The National Industrial Recovery Act is designed to improve business, to raise low wages, to put the unemployed back to work and, in so doing it gives the right to employees to organize in any sort of organization they see fit to have, or the right to continue to act as individuals in all dealings with their employers. There is nothing that compels or even encourages the organization of unions in any industry.

It is quite likely that organization of our men in the different departments will be seriously attempted by organized labor. It is also quite likely that our employees will be told that the Government encourages such organization. This has already been said to employees of our Company, but it is not the case. The Government is interested in improving business and in improving working conditions.

Now a few words as to our Company's policy on compensation of employees:

The Codes which this Company will sign this week contain no provision for the upward adjustment of hourly wages where hours are cut. Take for instance our Transportation Department, which has the largest number of employees of any depart-
584 ment: the Code states that men shall work a 48-hour week on the cars and buses, with permission to work six hours more where arrangement of runs requires it—in other words, 54 hours per week but not more than 10% of the runs shall be 54 hours. Many of our men are now working 60 to 65 hours per week and the reduction to an average of, say, 52 hours would mean a substantial reduction in the weekly pay. To offset this, the Company will restore the wage scale in effect for car and bus operators previous to July 1, 1932, which means that in many cases the Company will absorb practically all of a man's loss and a great portion of it even in the most exaggerated cases.

In the Electric Department where hours of labor are reduced from about 48 hours to 40 hours per week, an adjustment will be made in compensation to the end that the Company will absorb and stand the greater portion of the decrease in weekly compensation brought about by the decrease in number of hours worked. The same is true in our Gas Department in Norfolk.

All of the men on the cars realize what has happened to the transportation business in the last few years. It is easy to see a decrease in the number of riders and the number of fares that drop into the fare box. The transportation business is falling short of 1929 revenue by nearly two million dollars so that today very little is left after paying wages of employees and other

expenses. As a matter of fact, in the past 12 months employees of the Transportation Department have receive in wages 42c
5585 out of each dollar that i as gone into the fare box. Even if business improves with the increase in wages, our employees will still get about 42c of every dollar. However, we are still in the Transportation business and we expect to stay in it despite the fact it would be sound business to discontinue parts of our system and quit entirely where expenses are greater than the revenue that comes in.

It will interest you to know that complete compliance with the various Codes will mean the employment on our system of over three hundred people, which is a very substantial contribution to the relief of unemployment.

We believe that the NRA is going to work and be a success, and we stand ready in this Company to give the President our full and hearty cooperation and even go further than our codes require. All we can ask of our employees and associates in the business is that they stand by us and give us their complete cooperation. If we can get this cooperation as we have in the past, you can bet your last dollar that our Company will see the thing through, come what may.

5595 *I. O. E. Exhibit No. F*

MEMORANDUM

MAY 26, 1937.

On May 26, 1937, the members of the Cove Street Division of the Virginia Electric and Power Co. held a meeting in the Cove street garage. After the meeting was called to order, P. D. Brown, acting chairman, explained to the men about the meeting held at the main office by the officials of the company with the different department representatives, and he also read an article explaining collective bargaining.

A vote was taken for the purpose of deciding whether to organizing and collective bargaining with the Co. or seek an outside aid or belong to a union.

The results were as follows:

Collective Bargaining	126
CIO	20
Outside Help	6
Anything	1
Total	253

With the majority ruling Collective Bargaining won.

It was then decided to elect a chairman and secretary by majority vote, results were as follow: Chairman, P. D. Brown; Secretary, N. F. White.

Respondent's Exhibit 46

EXHIBIT



Date	Reports No.	Class	Cost	Remarks	Date	Reports No.	Class	Cost	Remarks

3587

PERSONNEL RECORD

Operator Mann E. M.

Address: 474 Fairfax Ave.

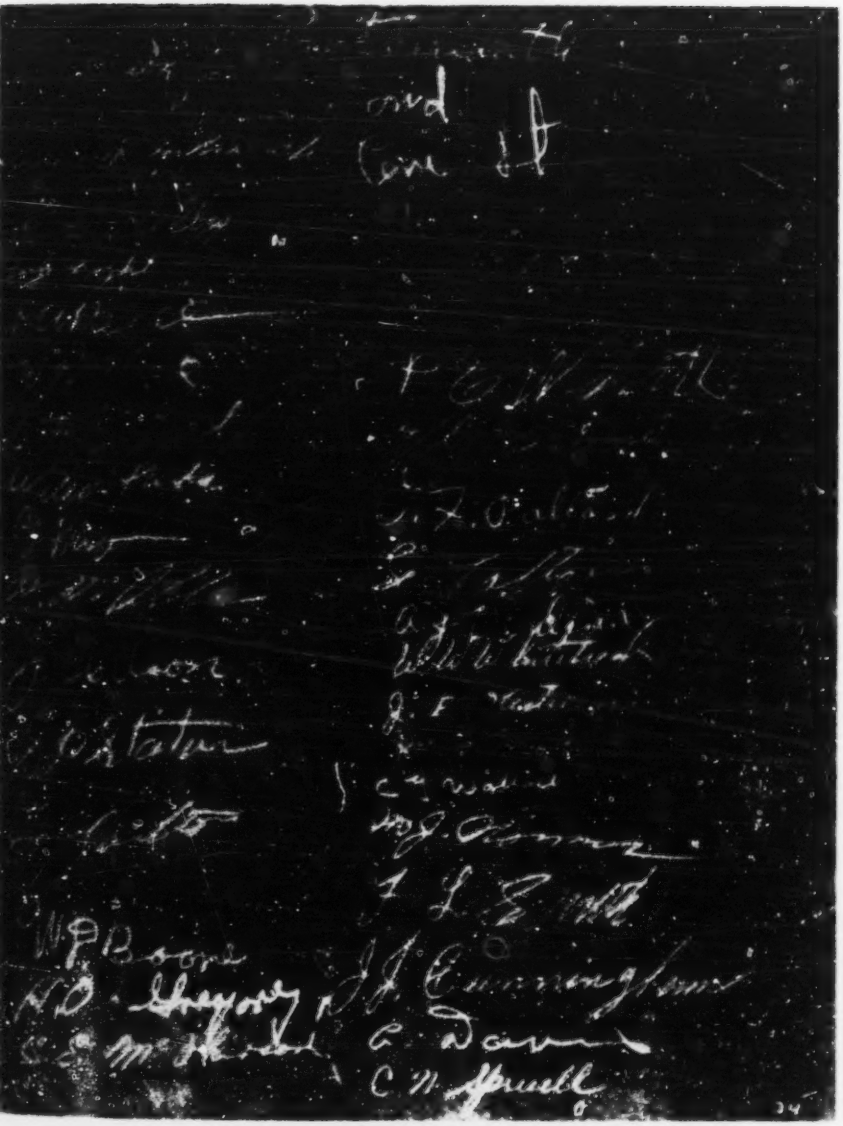
Badge Number: _____ Age: 29 Date of Birth: 11-5-07

Date Sworn: _____ Punch _____ Appointed: 9-8-34

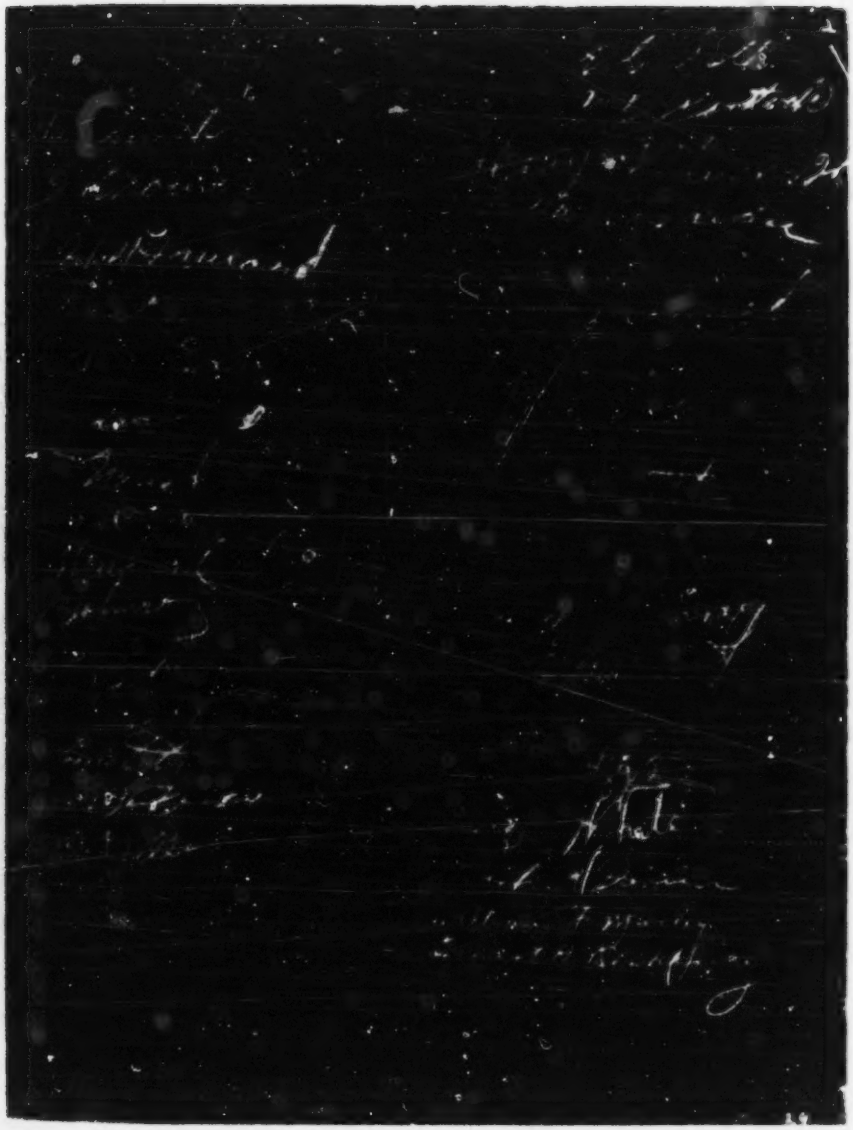
File Number: _____ Passed By: _____

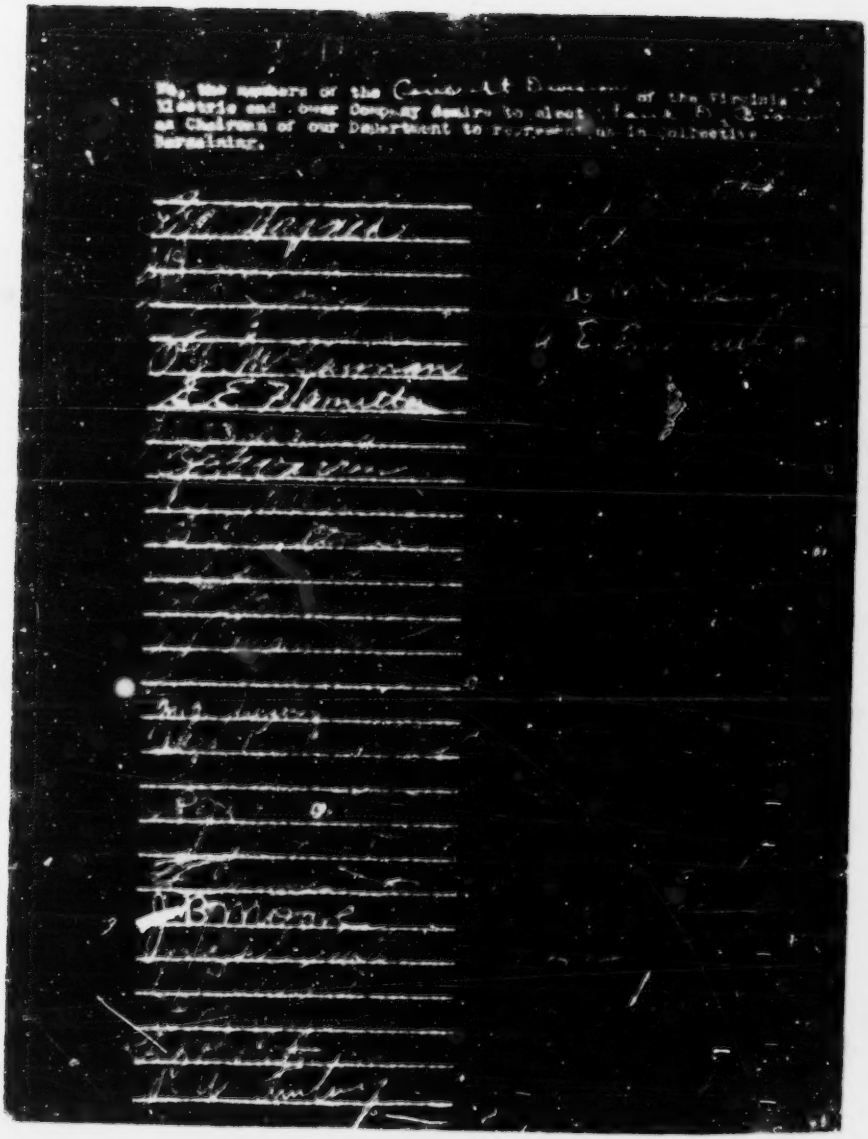
Date	Remarks	Action
1937		
Dec 5	Received Disciplinary	
	Transfer	



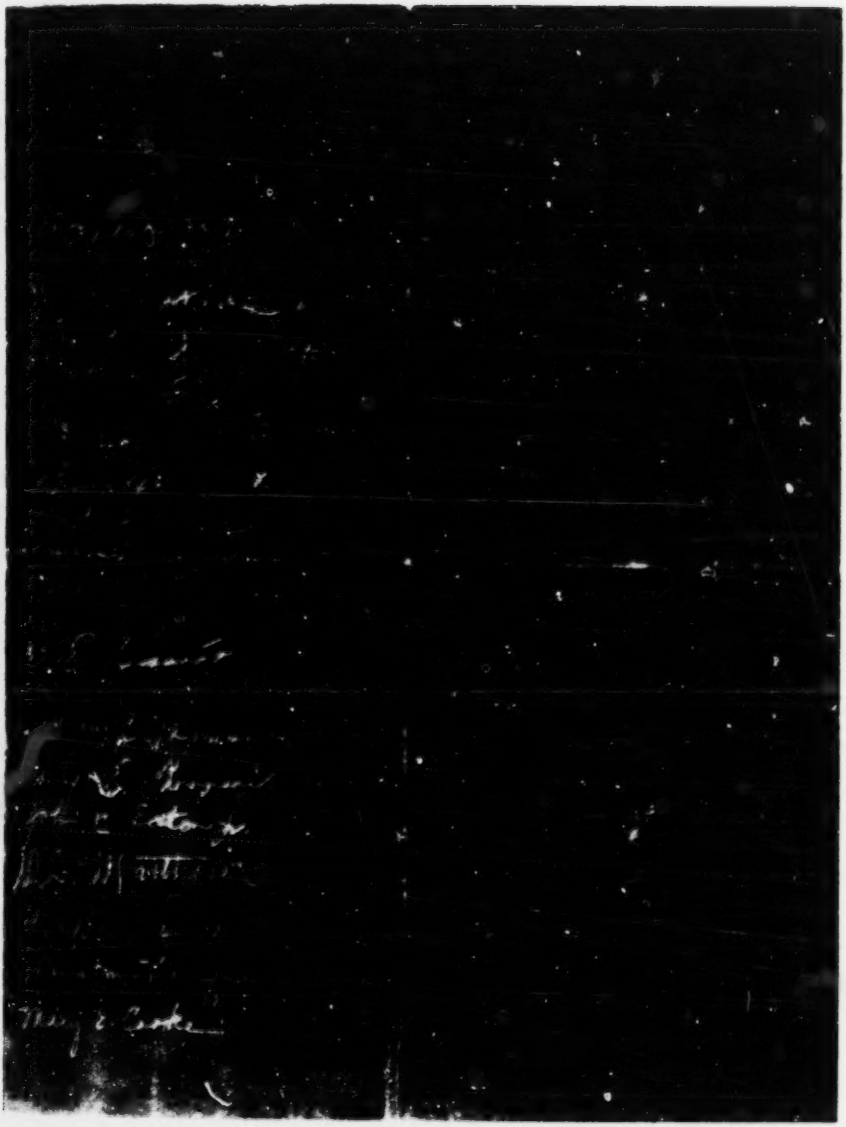








We, the members of the [illegible] of the Virginia Electric and Power Company desire to elect [illegible] as Chairman of our Department to represent us in collective bargaining.



A few of the terms wanted by the men were read, but none were officially recognized. This matter is to be discussed and decided on at a latter meeting.

After all signed recognizing P. D. Brown as their chairman the meeting adjourn.

N. F. WHITE, *Secty.*

5597 *I. O. E. Exhibit 4*

NORFOLK, VIRGINIA,
June 1, 1937.

A meeting was held on the sixth floor of the Virginia Electric & Power Company building of the representatives of the various departments throughout the Norfolk Division to form Collective Bargaining.

Mr. Elliott gave a talk on his ideas and plans for operating an organization of this type; he also submitted a constitution, application blanks, and membership cards, for approval by the employees.

A motion was made by D. M. Tatem and seconded by Mr. W. O. Morris that copies of the Constitution be printed and distributed to each group represented.

A motion was made and duly second that the cost of the printing of the Constitutions be pro-rated to each group represented.

A motion was made and duly second that Messrs. Nickerson and Diggs remain as temporary Chairman, and Secretary until the next meeting.

A motion was made and duly second that a committee be appointed to distribute the printed copies of the Constitution. In view of the fact that this work comes under the Secretary duties, the distribution of the printed Constitutions will be taken care of by the temporary Secretary.

It was agreed upon that the next meeting will be held on Thursday, June 10, 1937, at 8:00 o'clock on the sixth floor of the Virginia Electric and Power Building.

As there was no further business, a motion was made and second that the meeting be adjourned.

E. T. DIGGS,
Secretary (Temporary).

5598 *I. O. E. Exhibit 6*

NORFOLK, VIRGINIA,
June 11, 1937.

A meeting was held on the sixth floor of the Virginia Electric & Power Company Building on June 11, 1937.

The meeting was opened with a discussion on the attitude the Transportation Department has taken in the forming of an association of the Employees to be formed in this division.

Mr. Tatem submitted the constitution for approval and changes to the representative to take or make any change as seen fit by the employees.

Mr. Diggs made a motion that the constitution be distributed to the representatives present for changes and approval by the employees to be in writing, and a meeting to be held on Wednesday night to accept the changes and five men to go to a designated place on Thursday night to meet with the Richmond Division for changes and adoption of the constitution.

Mr. Ward told us that when there is a specified number of men more things could be accomplished than with a large number.

The motion was passed unanimously.

Mr. Tatem read the article which appeared in the evening paper and through the opinion of the general body, it was approved.

Mr. Ward gave us a short talk on the importance of cooperation and uniting together in forming an association of this sort, and that it was best for us to recognize the Norfolk Transportation Department as long as possible and to refrain from all possible public speaking and back slapping on other departments and divisions that are in the Norfolk Division. Mr. Diggs read a bulletin reactive to the talk given by Mr. Ward and his talk was vouchered by Mr. Diggs.

An open discussion was held on trying to obtain or secure some way to recognize the Transportation Department. Mr. Nickerson gave us a very nice and convincing talk on how Mr. R. E. Elliott, Jr., of the Transportation Department feels toward this proposed association. By the general consent of the body it was suggested that the Transportation Department be left along until we are established on a sounder basis. Four Transportation Department men were present at the meeting.

A letter from Mr. White, the proposed Counsel to draw up the Constitution and Bylaws was read by Mr. Tatem. The letter was discussed and approved by the entire body present.

5599 The Constitutions were distributed to the Steering Committee for presentation to the employees for approval and changes.

Mr. Elliott states the attitude and feelings of the Transportation Department regarding the entire situation to date.

By general consent of the body, the meeting was adjourned at 9:30 P. M.

E. T. DIGGS.
Secretary (Temporary).

5600 *I. O. E. Exhibit 7*

NORFOLK, VIRGINIA,
June 16, 1937.

A meeting was held in the Navy Y. M. C. A. on June 16, 1937, called to order by the Chairman of the Steering Committee. It was stated that Richmond had voted the tentative constitution unanimously.

A meeting was called for Tuesday night at 8:00 P. M. of the Steering Committee and other employees of the said Committee to discuss with the counsel the proposed Constitution. As a suggestion, Blair Junior High or Maury High School were proposed for the meeting place. Messrs. McHorney and Walsh were appointed as a committee to secure a hall for this meeting.

Mr. R. E. Elliott, Jr., talked for the operators, Bus and Railway, on their desire to affiliate with the majority of the Employees, and now want to join the Independent Association of Employees of the Virginia Electric and Power Company, the chairman stated that we would be glad to recognize their plea, and to have the proper representatives at the next meeting on June 22, 1937.

It was voted on unanimously for Mr. Elliott to make a statement to the Press referring to the operators who want to come into the Association of Employees t[illegible] signed by Mr. Elliott and not from this present Steering C[illegible]tee.

Mr. Tatem started explaining th[illegible]itution, but as there were several disputes between the d[illegible]at members present, it was the general consent of the body p[illegible]sent to withhold all questions and discussion until our tentative counsel made his trip to Norfolk, at our next meeting on June 22, 1937.

Mr. Elliott stated that he had made the following statement to the Virginian Pilot that the Transportation Department has agreed to join with the proposed Association of Employees, which is being formed throughout the entire system.

Twenty-five cents for registration fee will be collected from each employees. Mr. Diggs was elected unanimously as Treasurer—tentative.

As there was no further business, it was the general consent of the body to adjourn. The meeting adjourned at 10:10 P. M.

E. T. DIGGS.
Secretary (Temporary).

5601 *I. O. E. Exhibit 8*

NORFOLK, VIRGINIA,
June 22, 1937.

A meeting was held on June 22 at the Blair Junior High Shool located at Colley Avenue and Washington Park. The

Chairman, Mr. Tatem, asked that if any Foreman or any person above that grade were present to please retire from the Auditorium.

The chairman opened the meeting by giving a survey to the employees present of the progress and activities of the Steering Committee as to date.

Mr. White, our tentative counsel, of Petersburg, was introduced by the Chairman. Mr. White stated that his intention for tonight was to explain and answer any questions after each article of the Constitution is read.

The Constitution and bylaws were read, explained, and questions were asked and answered by Mr. White. After a few questions, Mr. Elliott made a short talk and stated in his talk that the men at 18th Street were wasting their time and they could be replaced in five minutes, and that Mr. Holtzclaw said, "Mr. Elliott, you have a good education and I think that you ought to have a better job." He also said that Mr. Carroll said, "You fellows on 18th Street do not deserve a whole lot of money, and I think you ought to have a better job."

Mr. Elliott stated that he has had three offers for better jobs and he intends to fight this organization to the very end, and that you can do what you please and if anyone here has a C. I. O. card, if they would meet him outside he would sign it. Mr. Elliott also states that an official of the Company came to his house and asked him to run this organization to the ground by way of the paper.

Mr. Ruett answered Mr. Elliott and contradicts Mr. Elliott on the fact that T. Norman Jones, Jr. did not say that the operators were only worth fifty cents an hour, and he also states that the best idea is to unite into one body and that he wanted to start an organization of this sort for some time and that he is fighting for the Independent Organization of the V. E. & P. Company.

By general consent of the body present, the meeting was adjourned at 9:28 P. M.

5602 *I. O. E. Exhibit 9*

NORFOLK, VIRGINIA.
June 28, 1937.

A meeting was held at the Navy Y. M. C. A. on Brooke Avenue, Norfolk, Virginia.

The Chairman opened the meeting by discussing the situation and data to date, and was vouchered by the entire body. He also stated that an office was to be established for three weeks for all the necessary office routine that would be needed for this organization.

A motion was made and duly seconded that an office be opened. The discussion was then opened on the salary of a typist for running the office. A motion was made and seconded that Mr. Diggs be left in charge of hiring a person for doing the office work.

The Chairman stated that his Department was having a paper box, sealed, placed in an automobile off the Company's property. This box was to be kept on the scene for twenty-four hours.

A general discussion was held on the deduction basis for deducting the dues from the employees' checks.

A motion was made by Wright and seconded by Nickerson that if the second half of the card is not signed the employee has the right to vote if the twenty-five cents is paid on the coming election. But if the V. E. P. Company accepts this plan, the employee will have to sign or else be refused a membership to the organization. The motion was passed.

Mr. Hough stated that he is fully in favor of an independent organization and wishes to state that he turned against Mr. Elliott last Tuesday morning and is pulling for this organization 100%.

The transportation department was advised by the Steering Committee to elect a representative from the Bus department in order to handle the ballots that will be distributed in the near future. The Portsmouth Transportation Department representative appointed a representative from the Norfolk Transportation to aid him in the voting. Name to be submitted to the Secretary.

Mr. Hall suggested that each member present put in a good word to the Bus and Railway Operators for their benefit.

A motion was made and seconded that the general office force vote in the respective district during the election.

A suggestion was made by Mr. Diggs to contribute a small donation to the Navy Y. M. C. A. for the earnest cooperation shown this organization in securing a room for meeting purposes.

The meeting adjourned at 9:50 P. M. by general consent of the entire body present.

E. T. Diggs,
Secretary (Temporary).

5603 *I. O. E. Exhibit 10*

Norfolk, Virginia,
July 13, 1937.

A meeting was called at 8:00 P. M. in our temporary quarters at Room 202, Monticello Arcade.

The Chairman stated that arrangements have been made to meet with the Richmond Interdepartmental Committee at the Nansemond Hotel, Ocean View, on Saturday afternoon at 1:00 P. M

Fifteen double rooms and meals for Saturday and Sunday at the rate of four dollars per man has been arranged.

A statement of the financial status of the Organization was presented as follows:

Collected	$207 00
Disbursements	186 36
Total	$ 20 64

The cash statement was passed and approved by the entire body present.

As no further business was needed, the temporary Steering Committee was dismissed.

The Chairman and Secretary elected to the Norfolk Interdepartmental Committee are as follows:

Mr. Tatem was unanimously elected Chairman.

Nominations for Secretary were: Mr. L. H. Walsh, Mr. R. D. Allison.

A motion was made and duly seconded that the nominations be closed.

Mr. Walsh was elected Secretary by a vote of 8 to 2.

The following is a list of Representatives elected from each voting division to the Norfolk Interdepartmental Committee:

ELECTRIC DIVISION

C. G. Steele, Chairman.
R. D. Allison, Secretary.
W. W. Faust, General Committee.

TRANSPORTATION DIVISION

W. W. Powers, Chairman.
A. C. Cartledge, Secretary.
M. D. Hough, General Committee.

5604 GAS DIVISION

Chas. McHorney, Chairman.
R. B. Bowen, Secretary.
Chas. McHorney, General Committee.
L. H. Walsh, General Committee.

ACCOUNTING AND SALES DEPARTMENT

S. N. Woodard, Jr., Chairman, Secretary, General Committee.

GENERAL COMMITTEEMAN AT LARGE

Damon M. Tatem.

GENERAL COMMITTEE

W. W. Faust, Electric Division.
M. D. Hough, Transportation Division.
L. H. Walsh, Gas Division.
Chas. McHorney, Gas Division.
S. N. Woodard, Jr., Accounting and Sales.
D. M. Tatem, Representative at Large.

The representatives were asked to have written out for the joint meeting to be held at the Nansemond Hotel, the demands of their respective departments.

As there was no further business to be discussed, the meeting was adjourned by consent of the entire body at 10:15 P. M.

3605 *I. O. E. Exhibit 15*

JULY 13, 1937.

DISTRIBUTION AND CONSTRUCTION MEETING

A meeting was held July 13, 1937, for the Distribution Department to decide on the requests to go into a contract for the General Committee to bargain for.

It was voted on and passed to ask for:

1. Pay for all legal holidays.
2. Two weeks' vacation with pay.
3. Time and one-half for all overtime plus two extra hours for traveling in case of being called out after regular working hours.
4. Fourty-hour week consisting of five eight-hour days, with no half days. If any crew worked on Saturday they would work eight hours and take Monday off.
5. For all provisions to be *n*etro-active to July 1st.

It was voted on and passed that all cable splicers, line-trouble shorters, and linemen, who had to take responsibility of the crew in foreman's absence, to receive $1.05 per hour and all other first-class linemen to receive $1.00 per hour, and the second- and third-class linemen to be scaled down to 75¢ per hour. For the best helpers 75¢ to be scaled down to 40¢ per hour, the regular starting pay for helpers.

The workers in the garage voted to request the same provisions as the 18th Street garage requested.

It was brought up that we have in the contract, that in case we had to work any overtime over our regular meal time, that we would be fed, but it was stated by W. W. Faust that he believed that could be satisfactorily adjusted in our own departments.

W. W. FAUST,
Acting Secretary.

5606 *I. O. E. Exhibit 16-A*

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC & POWER COMPANY

GENERAL COMMITTEE MEETING

July 17, 1937

Meeting of the General Committee was called at 5:00 P. M. in Room 308, at the Nansemond Hotel, Ocean View, Virginia.

Mr. Tatem stated that the Chairman and Secretary should be elected from Richmond in view of the fact that the Virginia Electric & Power Company now has their main office located in Richmond. Mr. Bertolett asked for an open discussion. A vice-chairman was suggested for Norfolk. A committee was suggested to investigate for a treasurer.

A nomination was made for Mr. Underwood for Chairman, he was elected unanimously. An open discussion was held on the duties of Secretary and Treasurer. The duties of the Secretary of the Norfolk and Richmond Inter-Departmental Council and the General Committee was described by Mr. White.

It was suggested that an amendment be added to the Constitution in regards to meetings of the Division.

There are approximately 89% of the employees signed up in the Independent Organization of Employees:

	Elg.	*Signed*	*Percent*
Richmond	1,652	1,466	89
Norfolk	1,075	950	89
	2,737	2,416	89

Any unit of work has the right to bargain collectively according to the National Labor Relations Bo'rd as per the statement made by Mr. White, who has made a trip to Washington.

Mr. Bertolett was elected Secretary unanimously.

Mr. Clark was asked to make some suggestions as to a Treasurer. Mr. Clarke stated that if he suggested any man it would be like appointing him. Mr. Clarke was asked to write the names of five men whom he thought that would be suitable for this job. The five names submitted were: E. A. Brinkley, G. W. Hudson, R. C. Etheridge, R. C. Thompson, W. J. Hoggard.

Nominations were as follows:

E. A. Brinkley	3
W. J. Hoggard	2
G. W. Hudson	4

5607 *I. O. E. Exhibit 16-B*

Mr. Hoggard was dropped, leaving Messrs. Brinkley and Hudston. Mr. Brinkley was elected Treasurer by a vote of 5 to 4.

As no further business it was the the general consent of the entire body present to adjourn at 6:10 P. M.

Meeting of the General Committee was called at 12:15 P. M. July 18, 1937. Roll was called and approved. The members of the General Committee are: Messrs. Underwood, Tatem, Walsh, Clarke, Wash, Hough, Bertolett, McHorney, Faust, and Diggs.

A letter was read for approval to Mr. Holtzclaw for an interview for collective bargaining.

A discussion was held on the salaries of the people to be employed in this organization.

A resolution was adopted that all expenses incurred by the Steering Committees of the Norfolk and Richmond Division in connection with the creation of the Independent Organization of Employees of the Virginia Electric & Power Company are hereby assumed as liabilities of that organization and resolve further that this committee expressly approves by both of the Steering Committees mentioned above and accepts the transfer of all funds and bills on hand and directs the Treasurer to honor all bills submitted that have been approved by the Secretary Resolution was adopted.

A motion was made that the present facilities for meeting be continued in Norfolk and Richmond and salaries of employees employed by continued. Motion passed unanimously.

The General Secretary and Treasurer was instructed to proceed with a list of the employees for deduction of the employee fee to the I. O. E. of V. E. P. Company.

Mr. Bertolett gave an idea of action taken in Richmond in regards to a loan of $200.00 from the Morris Plan Bank, payable in four months at $210.00. This loan was made for transportation of representatives to Norfolk.

Resolve that the expenses of the members of the committeemen of this organization incurred in connection with the attendance at any duly called meeting of any such meeting be refunded and that money advanced for the expenses of the attendance of members of committee at regular called meetings be refunded and persons producing evidence. Resolution was passed unanimously.

It was expressed that no news of this organization be given to the press unless it is approved upon by the General Committee, and no information will be published unless voted on by this Committee.

5608 *I. O. E. Exhibit 16–C*

It was stated that every effort be made to contact Suffolk in order to raise the percentage of employees signed-up.

It was suggested that an amendment be added to the Bylaws for a meeting of each section in each district in accordance with the National Labor Relations Board. A motion was made as follows: Section 2, Article I for the Bylaws be struck out and in lieu thereof the following be adopted: The members of each voting section in each district shall hold a meeting annually to be called by the representative of such voting section on the Division Committee, and at such meeting the member or members of the Grievance Committee are to be elected from that group of voting section and shall be elected by a majority vote. A quorum of such a meeting shall be ⅔ of all the members of the voting section in such district. At such meeting, any matters of interest to the members present shall be open for discussion. Special meetings of such groups may be called at any time by the member or members of the Grievance Committee representing such group. Any member of the Grievance Committee may be removed at any time by ⅔ vote of all the members of the group which elected him, at a meeting called by the representative of such group on the Division Committee upon petition of 25% of the members of such group. This bylaw change was adopted unanimously, and an open discussion was held on this change.

It was suggested that every effort be made to have all employees signed up without force of closed shop.

Mr. Underwood stated his appreciation for this committee and as there was no further business the meeting was adjourned at 1:37.

(Signed) E. T. UNDERWOOD,
Chairman.

E. T. DIGGS,
Secretary (Acting).

5609 *I. O. E. Exhibit 16–D*

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY

A meeting of the Richmond and Norfolk Inter-Departmental Committees was held at the Nansemond Hotel, Ocean View, Virginia, on July 17, 1937.

Meeting was called to order by Mr. Tatem of Norfolk at 2 P. M. The Representatives from Richmond were welcomed by the Norfolk Representatives.

Messers. Underwood and Tatem were nominated for Chairman. Mr. Underwood was elected by sixteen votes.

It was the suggestion of the Chairman to break up by groups, such as the Transportation, Electric and Accounting and Gas to elect a Chairman and Secretary to discuss the grievances that are to be drawn into the contract; the discussion was to be held in general terms such as wages, hours, closed shop. It was also suggested to forget classification of jobs in order to speed up action with the Officials of the Company. The groups were asked to try to complete their work by 3:30 P. M.

Mr. White was asked to explain what was closed shop.

The various groups retired to their rooms at 2:20 P. M., Transportation in room 350; Electric in room 355; Accounting in room 351; and Gas in room 358.

The groups returned for the general meeting at 4:40 P. M.

The committeemen retired for organization of the General Council. (See minutes of the General Council.)

Meeting recalled to order after supper at 8:45 P. M., and the roll was called. The following names are representatives from the various departments:

W. W. Powers	M. D. Hough
M. E. Wash	L. B. Edwards
A. C. Cartledge	J. W. Williams
C. W. Kiersey	T. Anderson
G. P. Collines	C. G. Steele
D. M. Tatem	G. A. Robinson
W. W. Faust	R. D. Allison
B. N. Slaughton	A. D. Bertolett
T. I. Barron	E. T. Underwood
E. T. Diggs	E. O. Joyner
A. L. Clark	G. P. Shepard
H. J. Little	L. H. Walsh
R. B. Bowen	C. McHorney
L. Shelton	J. E. Vanden
E. S. Cobb	

5610 *I. O. E. Exhibit 16-E*

The roll was called, checked, and approved.

The Chairman stated that the different voting sections would be discussed in order of the set-up. It was agreed upon that whenever the entire system wanted the same thing it would be combined into one article in the contract; in view of this, the Distribution and Construction of Norfolk did not want closed shop. It was agreed that the Distribution and Construction Sec-

tion (Electric Division) would not ask for closed shop as they were not fully prepared to commit themselves. After a discussion the Electric Division retired for a voting on closed shop. The results of the meeting of the Electric Division was a return of 8 to 2 for closed shop.

Each voting section turned over the grievances to Mr. White so as to draw up a contract.

An open discussion was held on seniority, as nothing was voted on, the matter of seniority will be taken up later.

Discussion was held on all of the grievances that were to be a main article in the contract.

As the grievances of the various voting sections were turned in the meeting was adjourned until 9:00 A. M. Sunday, July 18, 1937. It was also stated that the General Council will have another meeting on July 18, 1937.

The lawyer read out the general items of the contract:

1. Retroactive as of June 1, 1937.
2. Six-month period of contract.
3. Closed shop.
4. Recognition of this organization.
5. Hours & Overtime.
6. Vacations & Holidays.
7. Wages and rate of pay.
8. Collection of dues.
9. Arbitration.

A motion was made the suggestion made by Mr. White which was for an arbitration provision be adopted in the contract

Motion for adjournment was made and seconded, the meeting adjourned at 10:10 P. M. until 9:00 A. M. the next morning.

July 18, 1937

Meeting was called to order at 9:30 A. M., roll was called and approved. The first order of business was the reading of the contract which Mr. White had drawn up for presentation and approval by the Virginia Electric & Power Company and the Norfolk and Richmond Interdepartmental Council. It was the general consent of the entire body present to add another general article for the use of the Company's bulletin boards.

The different departments' grievances were read and approved; there was a few discussions on various things.

An open discussion was held for a provision to suit each department in regards to overtime and Mr. White stated that he

thought it would be impossible to draw a general article for overtime as it would aid some and hurt others, and he suggested that each division draw their own ideas on overtime.

Mr. Bertolett suggested that due consideration should be taken when the employer sells appliances to the employee; they should sell it at cost to the employer.

The question of women marrying while in the employee of the company was discussed.

Mr. Shepard congratulated the entire organization for its work and cooperation shown and thanked Mr. Tatem for his earnest cooperation in having a nice place for this meeting.

The committeemen were requested to turn their hotel money over to the General Secretary.

Mr. White explained how this tentative contract will travel in the way of being adopted by the Company. This matter was discussed very thoroughly.

A motion was made and seconded that Mr. White be given a rising vote of thanks.

The minutes of the General Committee were read and approved.

The representatives will be notified by the Secretary when the Company will accept the contract in question.

As no further business the meeting was adjourned at 11:06 A. M. by general consent of the entire body present.

(Signed) E. T. UNDERWOOD.
Chairman.

E. T. DIGGS.
Secretary (Acting).

5612 *I. O. E. Exhibit 11*

NORFOLK, VIRGINIA,
July 26, 1937.

A meeting of the Norfolk Interdepartmental Committee was held in the Employees Organization, Temporary Office, Room 202, Monticello Arcade, on Monday night, July 26, 1937, at 7:30 P. M.

The meeting was called to order at 7:30 P. M. by Mr. Tatem, Chairman, at 7:30 P. M.

Mr. Tatem discussed with the Representatives present the reason for calling the meeting, mainly to make necessary arrangements to attend the General Committee meeting to be held in Richmond, Friday morning at 10:00 A. M., with the Company Officials.

After some discussion it was agreed by all members of the Interdepartmental Committee that the General Committee members

leave Thursday evening at 5:30 P. M. in order to be in Richmond in time to meet with the Richmond Committee at 8:00 P. M. to discuss and make necessary arrangements for the meeting on Friday with the Company.

It was also agreed by a majority of the members to have the remaining members of the Interdepartmental Committee leave Norfolk in time to be on hand at the Organization's Office, 401 Franklin Street, Richmond, not later than noon on Friday, July 30, 1937.

Mr. McHorney, Representative, Gas Division, talked on the importance of every member being present at the coming series of meetings in Richmond and stated the possibility of a decision in our favor that may or may not reward us for all of our labors in this Organization.

A review and check on all membership application cards was made by the Representatives. In checking over the cards, it was found that Employees of the Suffolk District had not submitted any applications. Mr. Tatem advised the Committee that a meeting had been held in Suffolk recently and that they had some applications on hand, but the initiation fees were not on hand. Mr. R. D. Allison and Mr. Woodard were designated to stop in Suffolk on the way to Richmond on Friday, July 30, and pick up all applications and fees.

A motion was made by Mr. Allison to close our present Office until some definite information could be had as to the future business operation of the Organization. This was seconded by Mr. Woodard and passed unanimously.

A motion was made and seconded to use the present funds on hand to defray part of the expenses for the trip to Richmond, which was defeated.

5613 The Representatives were advised to obtain a wage and hour comparison that were in effect in their respective departments over a period of the last four or five years, in order that they may be in a position to present these facts if it became necessary.

Representatives were advised to call Mr. Walsh or otherwise convey information pertaining to how many employees were eligible to membership in the Organization and how many had been signed.

There being no further business the meeting was adjourned at 10:30 P. M.

(Signed) D. M. TATEM,
Chairman.
L. H. WALSH,
Secretary.

5614 *I. O. E. Exhibits 19–A to 19–S inc.*

19–A

SEPTEMBER 14, 1937.

DISTRIBUTION AND CONSTRUCTION MEETING

Meeting called to order by W. W. Faust.

Letter from the Chairman of the Union in regards to the hours now worked, and profound change in hours.

After a long discussion, it was a motion made by C. S. Brown that the hours stay the same.

The motion was put to a vote. Thirty-five (35) voted for the hours to stay as are.

Eight voted for a change.

There were forty-five (45) members present.

Meeting adjourned by vote.

W. W. FAUST,
Acting Secretary.

5615 *19–B*

OCTOBER 18, 1937.

DISTRIBUTION AND CONSTRUCTION MEETING

A general meeting of all members of the I. O. E. in the Suffolk District was held at the home of E. D. Oliver on the Holland Road with Walter Payne presiding.

An election was held for two men to the grievance committee for the Distribution Department.

W. J. Boyette, P. G. Jennings, and Charles Wilson were nominated. These men were asked to leave the room. A vote was taken and Boyette and Jennings were almost unanimously elected. Their duties were explained to them by W. W. Faust.

A discussion was then held by the Distribution employees on a collective grievance. They have been working Saturdays and not getting time and one-half for it, when their regular schedule consists of 5 9-hour days.

An election was then held to elect a man to sit in on the Norfolk Interdepartmental Committee in advisory capacity.

Walter Payne and E. D. Oliver were nominated. They were asked to leave the room and a vote was taken. Payne was elected 34 to 2. His duties were explained to him by W. W. Faust.

W. W. Faust then read the contract and explained it as best he could.

The meeting was then adjourned.

W. W. FAUST,
Acting Secretary.

5616 *19–C*

DECEMBER 8, 1937.

DISTRIBUTION AND CONSTRUCTION MEETING

Meeting was called to order by Mr. W. W. Faust at 5 o'clock P. M., with 42 members present.

Discussion as to time, date, and number of meetings to be held monthly.

Moved and seconded to hold meetings every first and third Thursday night at 8 o'clock P. M.

Mr. A. C. Lueckert was elected to act as secretary of the Thursday meetings.

The petition asking about the two hours be given for coming and going was turned over to the grievance committee, after a lengthy discussion, to take to Mr. Holik for a hearing.

S. C. Browne was elected to serve as vice chairman at the regular Thursday night meetings.

C. H. HASKINS,
Acting Secretary.

5617 *19–D*

DECEMBER 16, 1937.

DISTRIBUTION AND CONSTRUCTION MEETING

Meeting called to order at 8:20 P. M. with ten members present.

Discussion of letter from Mr. White in regards to Section B, Subsection 7, Paragraph B, on Page 7 of the Agreement.

Grievances—Discussed and decided to abide by the Bylaws of the present Constitution pertaining to the Grievance Committee of each department to hear the complaint and decide steps to be taken to straighten the matter out.

Moved and seconded that all grievances will be heard at the regular meeting either the first or third Thursday in each month.

A. C. LUECKERT, *Secretary.*

5618 *19–E*

JANUARY 6, 1938.

DISTRIBUTION AND CONSTRUCTION MEETING

Meeting was called to order at 8 P. M. with thirty (30) members present.

Income and Expense statement for 5½ months ending December 15, 1937, were read and discussed.

Increase of Organization Dues. Moved and seconded to have yearly dues increased from $3.00 to $6.00 per year.

Moved and seconded to have closed type trucks in preference to the type now in use.

Moved and seconded—Some way to maintain and transport hot sticks other than the methods now employed.

Moved and seconded to form a safety committee, one man from each crew.

A. C. LUECKERT, *Secretary.*

5619 *19-F*

JANUARY 20, 1938.

DISTRIBUTION AND CONSTRUCTION MEETING

Meeting was called to order at 8 P. M. with thirty-three (33) members present.

Motion made by Hugo and seconded by Miller to have a safety committee from each truck to meet once a month.

Motion made by Spruell and seconded by S. C. Browne for each crew to select their own man from their truck.

Motion made by Judge, seconded by Davis to have forty hours work week, pay for fourty-four hours, work week to consist of five eight-hour days.

Motion made by McCausland, seconded by S. C. Browne that if a man works more than one Saturday out of five he shall be paid time and one-half.

Motion made by S. C. Browne and seconded by Blanchard that if called out any time other than the regular work week he shall be paid for one hour going and one hour coming.

Motion made by McCausland and seconded by Heath that all time over eight hours on regular work day shall be paid as time and one-half, and double time for all work on Sunday and holidays.

Motion made by Davis and seconded by Blanchard that a normal work day to start at 8 A. M. and end at 4:30 P. M. for the line and cable crews.

Motion made by Blanchard and seconded by Judge for two weeks vacation a year with pay and pay for all holidays now observed in this department.

Motion made by Spruell and seconded by Judge that a man working on a regular assigned shift shall be paid double time for all holidays observed in this department.

Motion made by Davis and seconded by Marley to be paid every Friday night.

Motion made by Judge and seconded by Jarrad for 50% discount on monthly gas and light bill on all the amount above the minimum bill.

A. C. LUECKERT, *Secretary.*

5620 *19-G*

FEBRUARY 3, 1938.

DISTRIBUTION AND CONSTRUCTION MEETING

Meeting of the Distribution and Construction Voting Section was held in the I. O. E. Office, 205-206 Monticello Arcade Building, February 3, 1938, at 8 P. M., with thirty-one (31) members present.

In addition to closing the sides of trucks, Miller made a motion that the bows on the trucks that have low bows be raised Blanchard seconded this motion.

Motion made by Miller and seconded by Howard that all grievances except wage rates be heard at the regular meeting either the first or third Thursday in each month. (This is an amendment to a motion made at a former meeting.)

The following committee was appointed by W. W. Faust for adjustment and contract information:

TRUCK

A. P. Tyree, Office.
A. C. Lueckert, L. P. Wallace.
J. R. Kelly, Beamon.
L. D. Gallamore, Tweedy.
C. W. Knighton, Tomlinson.
W. M. Leary, Abernathy.
F. W. Hugo, Fowler.
S. C. Brown, H. Winn.
J. W. Clements & L. Tolton, Nelson.
W. R. Hare, Portsmouth Distribution.
C. H. Haskins, Trouble Department.
H. H. Howard, Carpenter.
R. L. Powell, Trolley Department.
M. E. Swain, Garage.

Motion made by Hugo and seconded by Kelly to drop motion made at previous meeting by Judge and seconded by Mr. Davis to have forty hours work week and pay for forty-four, work week to consist of five eight-hour days. This motion was carried eighteen (18) to two (2).

Motion made by Hugo and seconded by Gallamore that all matters pertaining to contract now being drawn up be kept in the Organization Office.

Meeting adjourned at 10:25 P. M.

S. C. BROWNE.
Acting Secretary.

5621 *19–H*

FEBRUARY 17, 1938.

DISTRIBUTION AND CONSTRUCTION MEETING

Meeting called to order at 8 P. M. with thirty-seven (37) members present.

Motion made by Haskins and seconded by Gallamore that all arguments of any personal nature will hereafter be barred at the regular meetings of this Organization.

Motion made by H. H. Howard and seconded by Boyd that any member bringing up an argument of any personal nature will be asked out of the Hall during the remainder of the meeting.

Motion made by Judge, seconded by Davis to ask for forty (40) hour week to begin Monday morning at 8 o'clock and end Friday evening at 4:30 P. M. with an increase in hourly pay to make up for hours cut—not to conflict with any other increase. Motion made by Dilling and seconded by Harrell to vote on this motion two weeks from this date. Motion carried 17 to 16.

Motion made by Howard, seconded by Griffith to request a number of adjoustments or merit raises to be given at a regular rate based on the number of men in each district, to be approved by two representatives of the management, and two representatives of the Organization. Passed and approved unanimously.

Meeting adjourned at 9:40.

A. C. LUECKERT, *Secretary.*

5622 *19–I*

MARCH 3, 1938.

DISTRIBUTION AND CONSTRUCTION MEETING

Meeting was called to order at 8 o'clock P. M. with sixty-nine (69) members present.

Motion made by Judge and seconded by Davis to strike out Section B Subsection I of our present contract. This motion was overruled 56 to 8.

Motion made by Griffith and seconded by Winslow to have the locker room, washbowls, and shower baths kept as clean and sanitary as possible. This motion was carried one hundred percent.

Motion made by Alexander and seconded by S. C. Brown to provide sufficient lockers, washbowls, and shower baths, and hot water supply for the convenience and health of employees.

Motion made by Griffith and seconded by Winslow to ask for 20% increase for everybody. Motion carried.

Motion made by Davis and seconded by Knighton to be paid every Friday night. Motion voted down.

Voted on motion made at last meeting to change hours to forty (40) hours per week. This motion was overruled by a majority of 57 to 8.

Meeting adjourned at 10:50 P. M.

A. C. LUECKERT, *Secretary.*

5623 *19-K*

MARCH 17, 1938.

DISTRIBUTION AND CONSTRUCTION MEETING

Regular meeting of the Distribution and Construction Section was held on March 17, 1938.

Meeting was called to order at 8:15 P. M. with sixteen (16) members present.

There was a general discussion on the financial situation of the Organization, and the proposal recommended by the General Committee to raise enough money to see the Organization through until July deduction. All the members present said they would cooperate as much as possible.

The committee appointed to find out about getting bigger and better washroom facilities reported they were still working on it.

A. C. LUECKERT, *Secretary.*

5624 *19-L*

APRIL 7, 1938.

DISTRIBUTION AND CONSTRUCTION MEETING

The regular meeting of the Distribution and Construction Voting Section was held on April 7, 1938.

Meeting was called to order at 8:35 P. M. with twenty (20) members present.

Grievance made by T. N. Harrell was discussed.

Motion made by Hare and seconded by Lemmond to have all truck drivers rated at least as high as third-class linemen. Motion carried.

Meeting was adjourned at 10:10 P. M.

A. C. LUECKERT, *Secretary.*

5625 *19–M*

APRIL 21, 1938.

DISTRIBUTION AND CONSTRUCTION MEETING

Regular meeting of the Distribution and Construction Voting Section was held on April 21, 1938.

Meeting was called to order at 8:15 P. M. with twenty (20) members present.

The proposed contract for 1938–1939 was read and discussed; said contract, after discussion, was approved by all members present. No further changes suggested.

The meeting was adjourned at 9:30 P. M.

A. C. LUECKERT, *Secretary.*

5626 *19–N*

MAY 5, 1938.

DISTRIBUTION AND CONSTRUCTION MEETING

Regular meeting of the Distribution and Construction Voting Section was held on May 5th, 1938.

Meeting was called to order at 8:15 with fifty-five (55) members present. Minutes of the last meeting were read and approved as read.

A lengthy discussion of the meetings since January 20th in regard to charges made by some of the members that a motion had been passed January 20th and subsequently over-ruled; also charges had been filed that Mr. Faust packed the meeting Hall on March 3rd to over-rule this motion.

The following questions were asked the group:

1. How many men feel that this Organization has not been a benefit to them? One man voted against. Davis.

2. How many men are not satisfied with this Organization? Two men raised their hands. Davis and McCausland.

3. How many men feel that this Organization is Company dominated? One man raised his hand. Davis.

4. How many men think W. W. Faust is Company dominated? One man raised his hand. Davis. At this point Mr. Davis stated that according to the present set-up of the Organization, Mr. Faust

couldn't help from being Company dominated. (Correction made at a later meeting.)

5. How many men think W. W. Faust has not did his best since he was elected as representative? No one raised their hand.

6. How many men think that W. W. Faust did wrong in re-opening the particular motion made January 20th that has caused so much argument? Four men raised their hands: Davis, Heath, H. D. White, and Blanchard. Davis was asked why he thought so, and he stated that he thought any motion that was carried should stand as it was. The other three were asked why they thought it was wrong and they stated that they thought they should not express their opinion here. It was then brought out at this time that Mr. Davis had said on February 3rd that he could get proof within ten days that other utility companies paid men for 44 hours a week when they only worked 40. He was asked if he had ever presented that proof and he said no.

5627 *19-O*

7. All the men were asked if W. W. Faust personally asked any of them to attend the meeting on March 3rd for the purpose of voting against any motion or for any other reason? None of them answered.

W. A. Clements made a statement that before every meeting that W. W. Faust posted a notice of meeting on the bulletin board and that everyone had a chance to read it and he couldn't see why W. W. Faust would be charged with packing a meeting when this notice was in plain sight of every one.

W. W. Faust read the Company proposals for amendments to the present contract and then read the minutes of the General Committee meeting of May 4th, 1938, in reference to the proposed amendments. A lengthy discussion followed.

W. W. Faust then discussed the campaign for one-dollar or more loan from each member and stated that due to the support that this Department has already given, that he wouldn't ask them for any more loans, but that the Organization still needed money, and if any of the members wanted to loan any more, it would certainly be appreciated.

Motion made by P. W. Bell that all members present give a vote of confidence for W. W. Faust and give him their hearty support and best wishes, especially in the bargaining that begins Monday, May 9th, 1938. Seconded by P. D. Brown and passed unanimously. (Mr. A. C. Lueckert presided at this motion.)

Meeting adjourned at 10:10 P. M.

A. C. LUECKERT, *Secretary.*

19-P

5628 MAY 10TH, 1938.

DISTRIBUTION AND CONSTRUCTION MEETING

Special meeting of the Distribution and Construction Voting Section was held in the I. O. E. Office, 205-6 Monticello Arcade, May 10th, 1938, at 5:00 P. M.

Roll was called showing sixty-two (62) members present. Minutes of the last meeting were read.

Mr. Davis made the following corrections to the minutes. On question No. 1, he said he raised his hand. On question No. 4, he wanted to be changed to read, "Mr. Davis said that according to the present set-up of the Organization, Mr. Faust couldn't help from being Company dominated.

A discussion followed concerning the action taken by the General Committee on May 9th. Mr. Faust stated that there were three things to be considered by this department; namely, to try to renew the present contract, negotiate for amendments to the present contract, or to cancel the present contract.

P. D. Brown made a motion that we try to renew the present contract; seconded by C. L. Oakley.

F. M. Blanchard made a motion that W. W. Faust bargain for the amendments to the contract that were read at our regular meeting April 21, 1938.

A vote was called on Blanchard's motion and nine (9) men voted for it, namely: F. M. Blanchard, A. R. Griffith, C. W. Knighton, B. F. McCausland, E. C. Self, C. T. Wescott, H. D. White, R. J. Lemmond, A. Davis.

A vote was called on Brown's motion and forty-nine (49) members voted for it, namely:

M. M. Alexander
W. E. Barnes
P. D. Brown
S. C. Browne
L. E. Carroll
P. S. Cornette
W. M. Culpepper
J. J. Cunningham
H. L. Easterlin
George Flora
L. D. Gallamore
C. H. Haskins
H. H. Howard
J. M. Jarrad
J. V. Johnson
L. Jones
J. R. Kelly
H. G. Kelly
B. E. Knight
W. M. Leary

19-Q

5629

A. C. Lueckert	W. H. Ward
W. F. Marley	W. W. Whitehead
J. Miller	P. E. Whitley
C. L. Oakley	W. P. Winslow
D. Osbourne	A. P. Zeher
H. I. Patrick	W. A. Clements
G. H. Rowe	P. W. Bell
F. L. Smith	Z. Blount
C. N. Spruell	N. D. Boone
R. S. Stewart	D. W. Denson, Jr.
S. P. Staten	C. Fitzgerald
E. B. Swink	J. H. Gibson
T. Taylor	W. R. Hare
H. W. Turner	O. F. Thompson
C. C. Wallace	

One man did not vote; namely, J. W. Kiersey.

L. C. Carroll, M. M. Alexander, and F. M. Blanchard were elected by the group to count the votes and they found that Brown's motion was carried forty-nine (49) to nine (9).

S. C. Browne,
Acting Secretary.

5630

19-R

May 19, 1938.

Distribution and Construction Meeting

The regular meeting of the Distribution and Construction Voting Section was held in the I. O. E. Office, 205-6 Monticello Arcade, Norfolk, Virginia, on May 19, 1938, at 8:00 P. M.

The roll was called showing thirty-one (31) members present.

Minutes of the last meeting of May 10th were read. This meeting of May 10th was a special meeting.

Meeting was called to order by W. W. Faust, representative.

Mr. White, Union Lawyer, made a talk to the members present in regards to the National Labor Relations Board.

Mr. Hadlick also gave a talk on the above subject.

Mr. Wash gave a talk on conditions of the Richmond Branch and of the separate Sections that they have there; such as, Flower Fund, a Benevolent Fund, and an Operation Fund. The Operation Fund taking care of amusements for the Organization; the

Benevolent Fund for the care of those who run into hard circumstances.

No motions were made at this meeting.

Meeting adjourned at 9:15 P. M.

A. C. LUECKERT, *Secretary.*

5631 *19-S*

JUNE 2, 1938.

DISTRIBUTION AND CONSTRUCTION MEETING

The regular monthly meeting of the Distribution and Construction Voting Section was held in the I. O. E. Office, 205-206 Monticello Arcade, Norfolk, Virginia, on June 2, 1938, at 8:15 P. M.

The roll was called showing 33 members present. Minutes of the last meeting were read and approved.

Meeting was called to order by W. W. Faust, representative.

Mr. Faust read the conditions on which the contract for the year 1938-1939 were voted on, the meeting of May 10, 1938; namely to try to renew the present contract. Mr. Faust then related that the present contract was renewed on May 18th on the condition that we could try to get adjustments as soon as the Labor Board testimony is over through Mr. Throckmorton, Mr. Brown, and Mr. Holik, and if we couldn't get satisfactory adjustments through these men, that we would bargain with the executive management of the Company for these adjustments.

Mr. White gave a talk on why it would be better to try to renew the present contract than to negotiate for a new contract, and the outlook of our Organization now.

Mr. Wash made a talk on the Richmond Branch of the I. O. E. and the cooperation of that branch with the representatives.

Mr. Cartledge of the Transportation Shops gave a talk on the I. O. E. of that branch.

Mr. Walsh of the Gas Department gave a talk on the above subject, also of the renewal of the present contract.

Mr. N. D. Boone made a motion that each member of this section of the Organization advance $2.50 of the current year's dues. L. Tolton seconded this motion. Motion called to a vote and four members voted for this motion to be carried. None opposed.

Meeting adjourned at 9:30 P. M.

A. C. LUECKERT, *Secretary.*

5632 *I. O. E. Exhibit 20-A*

Employees in attendance at meeting on sixth floor of Electric Building, May 24, 1937, to hear Mr. Holtzclaw's speech as read by Mr. R. J. Throckmorton

KEEVES AVENUE

C. G. Steele
D. M. Tatem
M. K. Crockett
H. Pfingst
M. A. Tyler
G. Martinsen
P. C. Lassiter
A. F. Black, Jr.
C. H. Wright
A. C. Wayne
J. T. Butts
N. R. Jones
L. H. Whitehurst
E. N. Robbins
R. E. Bell
L. E. Kelley
S. T. Simpson
C. O. Howren

COVE STREET

R. D. Allison
F. R. Allison
P. D. Brown
W. W. Faust

PORTSMOUTH ELEC.

W. O. Morris
W. R. Hare
C E. Snyder

ACCOUNTING DEPT.

S. N. Woodard, Jr.
E. S. Nickerson
E. T. Diggs
G. P. Darden (Miss)
W. E. Keeter
Warren Bray
Eva Fishbeck (Mrs.)
Taylor Katherman
Johnny Price
A. I. Capps

PORTSMOUTH ACC'TG

S. L. Thatch
B. T. Shea

NORFOLK SHOPS

J. A. McLendon
G. B. Harper
A. C. Cartledge
Leon Franklin
L. E. Beamon

NORFOLK BUS

J. D. King
M. D. Slaughter
M. F. Tehan

SALES DEPARTMENT

H. C. Smith
E. A. Darden
J. S. Jackson
J. E. Stallings
E. O. Joyner
L. M. Hitchings
N. E. Stevenson

GAS DEPARTMENT

Chas. McHorney
R. B. Bowen
A. C. Gregory
W. L. Spruell

PORTSMOUTH BUS

L. A. Peck
G. F. Stokley
S. G. Pittman
J. P. Jones
G. G. Daniels

5633 *I. O. E. Exhibit 20-B*

The following attended a meeting called by Mr. Holtzclaw on May 24, 1937:

ACCOUNTING

W. C. Daffron
Mae Lannigan
Helen Tribble
Juanita B. Seay (Gen. Off.)
C. C. Page (Sales)

DIST. ENG. & INST. (SERVICE BLDG.)

A. D. Bertolett
W. E. Holzbach

TRANSPORTATION SHOPS

E. C. Baker
J. W. Cary
C. W. Kersey
Mathew Shaw

FREDERICKSBURG

W. L. Shelton

WILLIAMSTON

T. A. Grey (Electric)
D. S. Cobb (Acct. & Gen. Off.)

PETERSBURG

C. C. Padera (Electric)
George Shepherd
(Acct. S. & G. O.)

TWELFTH ST. POWER STATION

D. D. Harrison
George Colonies
George Roberson
Joe Gaines
Tom Stuart

MAINTENANCE OF WAY

Thomas Anderson
Charles Wesley

BUS & RAILWAY

L. T. Haddock
L. B. Edwards
T. M. Ballard
M. E. Walsh

WILLIAMSBURG

J. E. Vaiden

ROANOKE RAPIDS

J. M. Taylor (Electric)
O. B. Harris
(Acct. & Gen. Off.)

LINE DEPARTMENT (RICHMOND)

H. V. Lemmond
B. T. Bryant
N. Staughton
J. C. Henshaw
W. C. Riner
W. C. Goodman, Jr.
W. M. Bowman
W. S. Earnhardt
H. B. Thomas
J. E. Childress
R. D. Miles
T. N. Clark
Wm. S. Shearin

5634 *I. O. E. Exhibit 22*

JUNE 15, 1937.

A meeting was held at the American Legion Hall at 8:00 o'clock by employees of the Virginia Electric and Power Company, together with Mr. White and Mr. Temple of the firm of

White and Temple, Lawyers, of Petersburg, for the purpose of discussing and ratifying the Constitution and make plans for a permanent organization within the Company.

The meeting was called to order by the Chairman, Mr. Eugene Underwood of Richmond.

Mr. Bertolett, Secretary, called the roll and the following representatives were present:

Messrs.	Brown	Roanoke Rapids.
	Harris	Roanoke Rapids.
	Butler	Petersburg.
	Bray	Petersburg.
	Wash	Richmond.
	Edwards	Richmond.
	Kersey	Richmond.
	Shelley	
	Davis	Paint Shop.
	Woodcock	Carpenter Shop.
	Saunders	Bus Shop.
	Oliver	Bus Shop.
	Keith	Electric Shop.
	Gordon	Electric Shop.
	Voorhees	Overhauling Shop.
	R. L. Barnett	Bus Shop.
	M. T. Barnett	Bus Shop.
	Shaw	Colored Representative.
	Roberson	Richmond.
	Colondyces	Production.
	Quinlan	Production.
	Gaines	12th Street.
	Shepherd	Petersburg.
	Vaughan	Accounting—Petersburg.
	Padera	Petersburg.
	Wesley	Richmond.
	Underwood	System Engineering and System Operating—System Operator.
	Clark	Accounting.
	Thompson	Construction Accounting.
	Hoggard	General Accounting.
	Daffron	Statistical and Taxes.
	Hebert	Pay Roll Department.
	Eggleston	A. R. C. Dept.
	Staughton	Lines—Richmond.
	Pilkinton	System Engineering.
	Riner	Underground.
	Bowman	Line Department.
	Davenport	Line Department.
	Childress	Line Department.

5635

Messrs. Earnhart	Line Department.
Corker	Line Department.
Clark	Line Department.
Bertolett	Distribution Dept.
N. S. Phillips	Engineering.
Brayant	Service Department.
Henshaw	Service Department.
C. A. Phillips	
Warner	Inspector.
English	Meters Department.
Points	Engineering Department.
Vaden	Williamsburg.
Shelton	Fredericksburg.
Thacker	Purchasing Department.
Little	Purchasing Department.
Page	Sales Department.
Anderson	Richmond Stores.
James	Bus Shop.
Green	Bus Shop.
Vaughan	Labor Department.
Taylor	Fredericksburg.
Tatum	Production Dept.—Norfolk.
Bundy	Norfolk Stores.
Brown	Distribution—Norfolk.
Morris	Distribution—Portsmouth.
Walsh	Gas Dept.—Norfolk.

After the roll call, Mr. Underwood gave a short talk on the foregoing meetings as follows: A Steering Committee was first appointed by the members of the Company to represent them and act for them in the formation of an intercompany organization. After several misunderstandings and difficulties this committee met at Petersburg with a similar committee from the other divisions. At that meeting a temporary organization was formed with a temporary chairman, Mr. Underwood. Mr. Earle White, a lawyer from Petersburg, was appointed by this group to act for us as Counsel in connection with this organization. He is to draw up a Constitution and Bylaws for the organization.

The subject of expenses was brought up. It was suggested that each person contribute 25c to go to the general fund to finance these meetings and the activities carried on therein. Whatever money is left over after the expenses are taken out shall be turned over to the Treasurer of the Organization. A motion was made to the effect that "each person in the Company donate 25c to the fund and that each representative at this meeting be appointed to take up this collection from his respective group, this money to be turned over to Mr. Bertolett to be used for expenses of this

Organization and left-overs to be turned over to the General Treasurer." This motion was carried.

5636 Mr. William Earle White of Petersburg was introduced at this time. He explained the outline of this Organization relative to the voting divisions for representatives on the Council. All representatives in Norfolk will form an inter-departmental council and all representatives in Richmond will form an inter-departmental Council. The Interdepartmental Council in Norfolk shall elect one member and the Interdepartmental Council in Richmond shall elect one member, etc. There are to be thirteen members in the Richmond Interdepartmental Council and 15 members in the Norfolk Interdepartmental Council and from these two Councils 10 members will be taken for the General Council. It is necessary that a Grievance Committee be appointed in each place operated by the Company.

Questions were brought up by different representatives regarding the election of representatives, and were answered by Mr. White.

It is provided that the General Council elect a Treasurer and all funds are to be under the direct control of the General Committee Council.

Discussion was had in regard to recalling representatives who proved unsatisfactory. There is no provision in the Constitution for this. Mr. Colondyes made a motion that a provision be made for this recalling of representatives and also for the replacing of said representatives. It was suggested that 25% of the members on petition have a right to call meeting with regard to recalling members of the Council. Then in ⅔ at the meeting vote to recall the representative he will be automatically thrown out. The following amendment was made to Article VIII of the Constitution: "On petition of 25% of the members of a voting section electing a representative it shall be the duty of the chairman of a division council to call an election in said voting section to be held in accordance with the By-Laws of the Organization to determine whether such representative shall be removed from Office. In such election, if ⅔ of the members voting shall vote in favor of such removal then the office of such representative shall be vacant and an optional election shall be called to fill such vacancy. In event the chairman is the representative affected the secretary of the Division Council shall act in his stead." The motion was seconded and carried and the above amendment added to the Constitution.

It was suggested that after "working conditions" under Declaration, "termination of employement" be incorporated in said Declaration of the Constitution.

Mr. Page suggested that wherever the word "Council" was mentioned in the Constitution, the word "Committee" be substituted as the word Council would probably cause confusion as it is usually used in connection with legal advisors.

5637 Under Article III—Membership, was added after "temporary employees of the Virginia Electric & Power Company" "except temporary employees on construction jobs."

Discussion was had as to the classification of office employees in the various departments, whether or not they are supposed to be classified with general office or whether with the respective department with which they are connected. This classification was left to the Steering Committee to investigate and classify as they see fit.

Under Article IV, Section 6, shall be added, "every employee of the Organization."

Under Article VII shall be added "The General Committee shall make up and send to each member of the Organization an annual account of disbursements and receipts to be sent out on the first of July of each year, which statement shall be certified by outside auditors."

Under Article VII, Section 6, shall be added "each voting section shall elect from the members of such section in every district where such section has members, at least one member of a Grievance Committee, to which shall be referred all the grievances of the members of such section. The Grievance Committee shall investigate and attempt to satisfactorily adjust all matters referred to it in writing by any member of that section.

Mr. Shepherd suggested making it possible for all members of the Company to become immediate members of this Organization, then in the future allow the 90-day clause to govern it.

The motion was made and seconded that the Constitution as read and amended be adopted. Same was carried unanimously.

Mr. Temple of the firm of White & Temple read the Bylaws.

Under Section 7 a motion was made and seconded that in case of a tie in election, another election be held in that group. This motion was opposed and Section 7 stays in as read.

Mr. Bertolett suggested that there was a slight transposition in Article II of the Bylaws "and pay the same, less the employer's cost of making such deduction."

A motion was made that Article II stand as given, and that dues of $3.00 be charged.

A motion was made for the adoption of the Bylaws as read and was unanimously agreed upon.

5638 Mr. White then read a form of membership card which is to be filled out in duplicate by each member, one card to

be sent to the Virginia Electric and Power Company and one to be retained by the Organization.

An election committee shall get together and arrange for an early election. The Steering Committee will have cards printed and election to take place as soon as possible.

Mr. Bertolett asked that those who could would please deposit 25c with Mr. Point to help defray the expenses of this election. The 25c shall be called "initiation fee."

In the membership card after "in advance" shall be added "less the cost of making such deduction."

Mr. Underwood then called the meeting for adjournment at 12:45 A. M.

Respectfully submitted.

JUANITA B. SEAY.

5639 *I. O. E. Exhibit 23*

REPRESENTATIVES AND GRIEVANCEMEN

NORFOLK DISTRICT

GENERAL COMMITTEE

W. W. Faust ..... General Chairman.
C. McHorney
D. M. Tatem.
S. N. Woodard, Jr.
M. D. Hough.
L. H. Walsh.

INTERDEPARTMENTAL COMMITTEE

ELECTRIC VOTING SECTIONS

W. W. Faust ..... Distribution & Construction.
C. H. Warren ..... Dist. Engineers & Installation.
D. M. Tatem ..... Production Operating.
C. G. Steele ..... Production Maintenance.

GAS VOTING SECTIONS

Chas. McHorney ..... Maintenance.
R. B. Bowen ..... Production.
L. H. Walsh ..... Distribution.

ACCOUNTING SALES & GENERAL OFFICE

S. N. Woodard, Jr. ..... Accounting.
E. O. Joyner ..... Sales.
Thos. Jones ..... General Office.

TRANSPORTATION VOTING SECTIONS

A. C. Cartledge ..... Transportation Shops.
M. D. Hough ..... Railway Operators.
W. W. Powers ..... Bus Operators.
J. W. Williams ..... Maintenance of Way.

5640 GRIEVANCE COMMITTEE—ELECTRIC DIVISION

DISTRIBUTION & CONSTRUCTION VOTING SECTION

W. J. Boyett ..... Suffolk.
P. G. Jennings ..... Suffolk.
Leonard Tolton ..... Norfolk—Laborer.
M. E. Swain ..... Norfolk—Garage.
B. E. Knight ..... Norfolk—Lineman.
J. W. Kiersey ..... Norfolk—Lineman Helper.
S. C. Browne ..... Norfolk—Cable Dept.
W. R. Hare ..... Portsmouth—Line Dept.
E. F. Ohlinger ..... Currituck, N. C.
J. H. Johnson ..... Va. Beach.

DISTRIBUTION ENGINEERS & INSTALLATION

James C. Melton ..... Norfolk—Engineers.
James H. Stoneman ..... Norfolk—Engineers.
Walter T. Payne ..... Suffolk—Engineers.
W. B. Vaughan ..... Suffolk—Installation.
D. L. Matthews ..... Portsmouth—Installation.
Debie C. Watson ..... Portsmouth—Installation.
J. P. Hampshire ..... Norfolk—Meter.
F. R. Allison ..... Norfolk—Meter.
E. H. Reeling ..... Norfolk—Meter.

PRODUCTION MAINTENANCE VOTING SECTION

S. T. Simpson ..... Norfolk—Reeves Avenue
N. F. Krippendorf ..... Norfolk—Reeves Avenue.
C. Fitzgerald (colored) ..... Norfolk—Reeves Avenue.

PRODUCTION OPERATING VOTING SECTION

L. Old ..... Norfolk—Reeves Avenue.
N. R. Jones ..... Norfolk—Reeves Avenue.
G. R. Sifford (colored) ..... Norfolk—Reeves Avenue.

GAS DIVISION

GAS PRODUCTION VOTING SECTION

E. L. Phelps.
E. L. Barco.

GAS DISTRIBUTION VOTING SECTION

H. L. Fulgham.
J. B. Chesson.

7941 GAS MAINTENANCE VOTING SECTION

W. L. Sprnell.
A. C. Gregory.

ACCOUNTING SALES & GENERAL OFFICE VOTING SECTION

ACCOUNTING VOTING SECTION

G. W. Bray ..... Norfolk.
S. L. Thatch ..... Portsmouth.
J. E. Parker ..... Suffolk.
Frank Scatherough ..... Va. Beach.
E. S. Nickerson ..... Norfolk—Credit Dept.

SALES VOTING SECTION

H. L. New ..... Portsmouth.
Geo. E. Rogers ..... Suffolk.
E. A. Darden ..... Norfolk.
J. M. Eaton ..... Norfolk—Service.
K. E. Kramer ..... Norfolk—Industrial.
E. J. Bundick ..... Norfolk—Stores.
W. R. Keeter ..... Norfolk—Meter Reading.

GENERAL OFFICE VOTING SECTION

Thomas Jones ..... Norfolk.

TRANSPORTATION DIVISION

RAIL VOTING SECTION

R. L. Manning ..... Norfolk.
C. D. Bovee ..... Norfolk.
W. H. Vick ..... Norfolk.

BUS VOTING SECTION

G. L. Council ..... Norfolk.
R. L. Clifton ..... Norfolk.
V. W. Forehand ..... Norfolk.
H. C. Rountree ..... Portsmouth.
B. E. Pool ..... Portsmouth.

MAINTENANCE OF WAY VOTING SECTION

Henry Parker ..... Norfolk.
P. B. Bennett ..... Norfolk.

7942 SHOPS VOTING SECTION

M. M. Dey ..... Norfolk.
J. A. McLendon ..... Norfolk.
J. E. Curling ..... Norfolk.
J. B. Jackson ..... Portsmouth—Bus Shop.
H. M. Sweet ..... Portsmouth—Bus Shop.

3643 *I. O. E. Exhibit 24*

Representatives and Grievancemen

RICHMOND DISTRICT

GENERAL COMMITTEE

M. E. Wash ..... General Secretary.
G. A. Roberson.
D. T. Earley.
C. J. Shepherd.

INTERDEPARTMENTAL COMMITTEE

ELECTRIC VOTING SECTIONS

N. Staughton ..... Distribution & Construction.
G. A. Roberson ..... Production Maintenance.
G. P. Colonies ..... Production Operating.
A. D. Bertolett ..... Dist. Engineers & Installation.
C. D. Shaw ..... System Engineering & Operating.
T. I. Barham ..... Transmission.

ACCOUNTING SALES & GENERAL OFFICE

D. T. Early ..... Accounting.
G. P. Shepherd ..... Sales.
H. J. Little ..... General Office.

TRANSPOSTATION VOTING SECTIONS

M. E. Wash ..... Bus Operators.
L. B. Edwards ..... Railway Operators.
C. W. Kersey ..... Transportation Shops.
Tom Anderson ..... Maintenance of Way.

GRIEVANCE COMMITTEE—ELECTRIC DIVISION

TRANSMISSION SECTION—RICHMOND

C. N. Herron.

SYSTEM ENGINEERING & SYSTEM OPERATING—RICHMOND

W. W. Pilkinton.

3644 DISTRIBUTION & CONSTRUCTION

J. E. Childress ..... Richmond.
B. T. Bryant ..... Richmond.
W. C. Piner ..... Richmond.
C. C. Sharon ..... Richmond.
T. Slater ..... Richmond.
Baker West, Jr. ..... Williamsburg—All Elec. Depts.
J. W. Harris ..... Williamston—All Elec. Depts.
R. K. Milbourne ..... Petersburg—Distrib. & Const.
E. A. Starke ..... Roanoke Rapids—All Elec. Depts.
W. L. Shelton ..... Fredericksburg—All Elec. Depts.

DISTRIBUTION ENGINEERS & INSTALLATION

C. L. Point ..... Richmond.
H. C. Deaver ..... Richmond.
L. C. English ..... Richmond.
R. G. Council ..... Richmond.
Cary Phillips ..... Richmond.
C. C. Padera ..... Petersburg.
Raymond Allin ..... Petersburg.

PRODUCTION MAINTENANCE SECTION

G. A. Roberson ..... Richmond.
T. A. Stuart ..... Richmond.
John Tucker (Colored) ..... Richmond.
D. C. Clark ..... Roanoke Rapids--Pro. Oper. & Main

PRODUCTION OPERATING SECTION

Booker L. Ellis (Colored) ..... Richmond.
Frank P. Crowell ..... Richmond.
F. C. Simmons ..... Richmond.
G. L. Dodson ..... Petersburg.
M. A. Cassidy ..... Petersburg.

ACCOUNTING SALES & GENERAL OFFICE SECTION

ACCOUNTING VOTING SECTION

J. V. Hebert ..... Richmond.
A. R. Boyd ..... Richmond.
W. W. Donihat ..... Richmond.
A. C. Andrews ..... Petersburg.

SALES VOTING SECTION

Fred Wise ..... Petersburg & Richmond.

5647 ACCOUNTING SALES & GENERAL OFFICE

W. A. Trala ..... Roanoke Rapids.
K. D. Worrell ..... Williamston.
J. E. Ward ..... Williamsburg.

GENERAL OFFICE

Miss Juanita Seay ..... Richmond.
T. D. Staurt ..... Richmond.
H. T. Young ..... Richmond.

TRANSPORTATION DIVISION

RAILWAY OPERATORS

S. F. Garrison ..... Richmond.
H. H. Lawrence ..... Richmond.
R. M. Haddock ..... Richmond.

CASHIERS & CLERKS

W. R. Mathews..... Richmond.
R. E. Bagby..... Richmond.

BUS OPERATORS

R. E. Bagby..... Richmond.
A. L. Teachey..... Richmond.
W. R. Kirks..... Petersburg

SHOPS VOTING SECTIONS

C. B. Gordan..... Richmond—Machine.
A. C. Keith..... Richmond—Electric.
W. C. Vorhees..... Richmond—Overhauling.
J. H. Shelly..... Richmond—Paint Shop.
S. L. Woodcock..... Richmond—Carpenter Shop.
J. M. Slater..... Richmond—Inspection Shop.
L. J. Oliver..... Richmond—Bus Shop.
Wm. Veniskey..... Richmond—Bus Shop.
J. C. Bray..... Petersburg Shops.
M. Shaw..... Colored Employees.

MAINTENANCE OF WAY VOTING SECTION

Tom Anderson..... Richmond.
C. L. Westley..... Richmond.
S. Burleigh..... Richmond.

5646 *I. O. E. Exhibit 28*

NORFOLK, VIRGINIA,
June 8, 1937.

To Employees of the Virginia Electric & Power Co.:

The situation to date as regards the formation of the Steering Committee is as follows:

It has been planned to have each department in each division set up its own local committee within the department. One member of this committee should be elected at large to act as Chairman and to be a member of the Central Committee. The Norfolk Division Central Committee will be composed of one such representative from each department, with one vote. This committee will meet and elect its officers and remain in office for such time as set forth in the Constitution.

Your department committee will represent your department in any claims for collective bargaining, these claims to be presented through the Central Committee and in conjunction with like departments throughout the system. Whatever agreement is reached with one department will affect all like departments throughout the system.

The Association lawyer will have ready for your approval within the next several days a tentative constitution and bylaws which will govern the organization. As soon as the constitution and bylaws are agreed upon the association will be ready to proceed with collective bargaining.

Let me stress the importance of giving careful consideration to the employees that you elect to represent you on any and all committees. This is a most important undertaking, one that affects one of us vitally and probably in the future in ways that cannot be foreseen at the present. A big job and a great deal of work for the right representative.

For further information see your present committeemen.

DAMON M. TATEM.
Temp. Chairman, Steering Committee.
E. T. DIGGS.
Temp. Secretary, Steering Committee.
Norfolk, Virginia.

5647 *I. O. E. Exhibit 29*

Chairman Electric, Div. Tatem Production Operation.

1. Pay increase 20¢ per hr.
2. Two weeks' vacation with pay for any employee in the service of the company one year or longer.
3. Proper recognition for seniority.

COPY

4. *Student Engineers* to serve not more than six months on one job and to so continue until he has served not more than 6 months on each job in the Prod. Dep.
5. Regulation of job rates to a uniform standard. Each job to have a max. rate of pay. The max. rate of pay to be received one month after the employee takes over the responsibility of the job in question. Present max. rates are to remain in effect.
6. Closed shop.
7. Maintain the present hours.
8. Men who work overtime to get time & one-half pay.

5648 *I. O. E. Exhibit 30*

NORFOLK, VIRGINIA,
August 4, 1937.

At a call meeting of the Norfolk Interdepartmental Committee was held at the residence of Mr. M. D. Hough, 111 West 17th Street, on Tuesday evening at 8:00 P. M., August 3, 1937.

The meeting was called to order by the Chairman, Mr. D. M. Tatem.

Mr. Tatem talked on the procedure and ultimate arrival to the contract for the Organization with the Virginia Electric and Power Company.

After some discussion on the contract as it pertains to General Accounting and Sales Division, it was agreed that this portion of the General Committee would not sign the contract until such time the above mentioned Division had arrived at some decision.

Mr. Woodard, speaking on the General Office Workers Voting Section, stated that something should be done about this situation as it now stands; it is very unsatisfactory. After considerable discussion on this matter, reference was made to previous meetings in which this matter was discussed. In view of the fact that our first contract had been negotiated for successfully, it was agreed that no action on this matter be taken at this meeting.

Representatives were advised to have as many application cards properly signed and in the hands of the Secretary not later than the last of the week in order to have them in the hands of the Company's Payroll Department by Tuesday of next week.

There being no further business to be discussed the meeting was adjourned at 11:30 P. M.

L. H. WALSH, *Secretary.*

Approved by:
D. M. TATEM, *Chairman.*

5649 *I. O. E. Exhibit 31*

NORFOLK, VIRGINIA,
June 14, 1937.

Meeting at Reeves Avenue Auditorium.

Mr. Tatem gave a general review of what the Committee had done up to this time.

A tentative form of the Constitution was read and discussed.

A motion was made and carried that we instruct our representatives to a meeting to be held in Richmond to oppose the article in the Constitution which asks the V. E. P. Company to deduct the dues for the Organization from our pay, as there may be some question about the Company influencing or aiding us by doing so.

Other than these motions the Constitution was adopted unanimously.

There being no other business, the meeting adjourned.

N. R. JONES.
Temp. Chairman.
C. G. STEELE.
Temp. Secretary.

5650 *I. O. E. Exhibit 32*

MAY 29, 1937.

DEAR SIR: There will be a meeting of the Steering Committee of the Employees Organization in the Auditorium of the Service Building, 2400 Grayland Ave., Richmond, Va., on Tuesday night, 8:30 P. M.

Please attend.

WALTER E. HOLZBACH.
Gen. Chairman.

5651 *I. O. E. Exhibit 33*

MINUTES—MEETING OF STEERING COMMITTEE FOR VEPCO WORKERS COUNCIL, JUNE 1, 1937

PREFACE

On May 24, the various Departments through the Richmond Division of the Va. Elec. & Power Co. were invited to elect delegates to a meeting called for 8:00 o'clock of that evening in the general offices of the Company, at 7th and Franklin Sts., Richmond, Virginia. The purpose of this meeting was to have a general discussion of the Wagner Act and its effect upon the worker personnel of the Division, with the object of transmitting the substance of this discussion to the general working personnel of the Division. In the course of the meeting, Mr. Holtzclaw presented a statement in behalf of the Va. Elec. & Power Co. and copies of this statement were subsequently made available to the various delegates for their use in reporting the substance of the meeting back to their Departments.

To constitute a center for any immediate action which the workers might choose to take, Mr. Holzbach, of the Richmond Meter Department was nominated and unanimously elected as Temporary Chairman, to hold office until properly replaced.

In the course of the ensuing week, the various delegates reported to their respective Departments on the discussion in the meeting of May 24, and endeavored to obtain an expression of the attitudes of these Departments toward the issues involved.

In each instance, the workers felt that for the protection of their interests they should organize in conformity with the provisions of the "Wagner Act" and other pertinent legislation. Also, the workers emphatically desired that such an organization should be instituted among themselves, that it consist only of Va. Elec. & Power Co. employees who would act only for themselves, and that there be no outside aid or interference whatsoever.

The workers in these several meetings also drew up petitions which expressed the foregoing purposes, and elected delegates to a Steering Committee which would draw up a form of organization that would put into force these purposes; and which would be submitted by the Steering Committee to the workers for their final action.

5652 On June 1, Mr. Holzbach called the Steering Committee together for its first meeting.

The minutes of this meeting follow:

The meeting was called to order by the Temporary Chairman, Mr. Holzbach, at 9:00 P. M.

Mr. Holzbach requested Mr. A. D. Bertolett to act as Temporary Secretary.

The roll was called and the following delegates were present:

Name	Department	Number of workers represented
J. L. Butler	Transportation—Petersburg	35
E. T. Underwood	System Engineers & Operators—Richmond	35
L. B. Edwards	Railway—Richmond	280
A. L. Clarke	Accounting & General Office—Richmond	100
N. Staughton	Lines—Richmond	90
G. J. Shepherd	Sales & Accounting—Petersburg	30
C. C. Pare	Sales—Richmond	20
A. D. Bertolett	Distribution Dept.—Richmond	100
J. E. Vaden	Williamsburg	15
W. L. Shelton	Fredericksburg	50
E. A. Roberson	Power & Substations—Richmond	160
C. W. Kersey	Mechanical Dept.—Richmond	210
T. M. Ballard	Bus—Richmond	190
[illegible] C. Peters	Elec. Dept.—Petersburg	60
T. Anderson C. Wesley	Track Dept.—Richmond	52
Total		1,437

The Temporary Chairman stated the purposes of the meeting, which were to organize the Steering Committee; to establish such subcommittees as might seem necessary; and to initiate plans for framing a scheme of organization for the workers represented on the Steering Committee.

Mr. Holzbach then explained that his official responsibility as Temporary Chairman was now ended and that it would be neces-

sary for the Steering Committee to elect officers for the direction of its affairs.

5653 Mr. Bertolett, in behalf of the Committee, thanked Mr. Holzbach for his fine services and nominated Mr. Underwood for Chairman of the Steering Committee. Nomination was seconded. Motion was made to close nominations and Mr. Underwood was unanimously elected.

Nominations for a Secretary were opened. Mr. Roberson nominated Mr. Bertolett. Nominations were closed and Mr. Bertolett was unanimously elected.

The Chairman reaffirmed Mr. Holzbach's remarks regarding the purpose of the meeting and introduced for discussion the question of the use and value of the petitions from the workers.

Mr. Kersey stated that he held no petition by his Department, that he was elected from a group of 9 subleaders within his Department to represent the whole, and that he was instructed in a mass meeting to act for them on this Steering Committee. His eligibility for membership on the Committee and his authority to act were duly acknowledged.

A general discussion of the petitions followed. Mr. Page advised against any unnecessary campaign to obtain petitions where none now existed and pointed out that, though petitions added force, anyone acting like Mr. Kersey would have a status, for the purposes of the Steering Committee, equal to that of anyone carrying a petition.

The Chairman explained the desirability of engaging a lawyer to protect our interests and suggested that action be taken along such line. A general discussion ensued concerning the number of lawyers desirable. The following lawyers were presented for consideration:

Mr. Bohannon, of Petersburg.

Mr. Leon Bazelle, of Richmond.

Mr. Murray McGuire, of Richmond.

Mr. Clarke questioned about action in the Norfolk Division to date along this line. Chairman replied that Norfolk is holding mass meeting tonight and that efforts will be made tomorrow to contact Norfolk's Chairman regarding their action to date.

Motion was made by Mr. Page that the Chairman, the Secretary, and a third member to be selected by them constitute a committee to meet a similar committee from Norfolk, and jointly select a lawyer whose duties will be to draw up a constitution and plan of organization for the desired association of Va. Elec. & Power Co. workers.

5654 The Secretary suggests that, as Richmond is ready to go ahead and as the status of Norfolk is indefinite, the Committee from Richmond proceed to select a lawyer at once to

protect our immediate interests, and later get together with Norfolk when it is ready; and moved to amend the motion accordingly.

The Chairman suggests that only a day or two will be lost if we wait for joint action and that the losses, if any, due to the delay will be more than offset by the better feeling likely to be created among the two Divisions.

Mr. Anderson affirms the Chairman's views and insists upon joint action. Several other similar statements are made.

The Secretary withdrew his motion for amendment.

Mr. Padera moves for an amendment to the motion so that the third member of the committee be selected by the Steering Committee as a whole. Motion seconded.

Question was called and Mr. Page's motion as amended by Mr. Padera was unanimously adopted.

Nominations for third member of committee were opened. Mr. Shepherd, Mr. Clarke, Mr. Page, and Mr. Roberson were nominated. By ballot, Mr. Clarke was elected.

Mr. Roberson requested a copy of the minutes of the meeting to be available to him for use in a meeting which he had planned for his Department on Thursday evening. The Secretary was so ordered.

Mr. Padera suggests that there be provision for reimbursement of expenses by the delegates.

The Secretary moves that he keep a suitable record of proper expenses by delegates to the Steering Committee from this date with the object of reimbursement when funds are available. Motion seconded and unanimously passed.

Mr. Clarke moved for adjournment at 11:00 P. M. Seconded and passed.

A. D. BERTOLETT, *Secretary.*

Approved:

E. T. UNDERWOOD, *Chairman.*

5655 *I. O. E. Exhibit 34*

MINUTES

Joint Meeting of Norfolk and Richmond Committees for Forming "Workers Alliance," called for 8:30 P. M., June 2nd, 1937, at the V. E. & P. Company offices in Petersburg, Virginia.

The meeting was called to order at 8:30 P. M. by the Chairman, E. T. Underwood, of Richmond.

Members present: Mr. Clarke and Mr. Bertolett.

The Committee from Norfolk stated by telephone that it would be unable to attend, because of lack of transportation; but could meeting the next evening at the same time.

The chairman called a meeting for June 3, 1937, at the same time and place.

The meeting was adjourned at 9:30 P. M.

A. D. BERTOLETT, *Secretary.*

Approved:

E. T. UNDERWOOD, *Chairman.*

5656 *I. O. E. Exhibit 35*

JUNE 9, 1937.

Meeting was called to order by the Secretary, Mr. A. D. Bertolett at 8:30.

Mr. Clarke was elected as temporary Chairman, being that Mr. Underwood was absent.

Roll was called showing the following members present:

Messrs.	Bertolett	Secretary.
	Butler	Petersburg.
	Brown	Roanoke Rapids.
	Staughton	Richmond.
	Haddock	Richmond.
	Wash	Richmond.
	Edwards	Richmond.
	Barham	Petersburg.
	Kersey	Richmond.
	Roberson	Richmond.
	Shepherd	Richmond.
	Padera	Richmond
	Harris	Roanoke Rapids.
	Gray	Williamston.
	Cobb	Williamston.
	Gaines	Richmond.
	Wesley	Richmond.

The Chairman invited the new members present to introduce themselves:

Mr.	Barham	Transmission.
	Wash	Bus.
	Haddock	Rail.
	Ken Brown	Roanoke Rapids.
	Joe Gaines	12th Street Power Station.
	T. A. Gray	Williamston—Line.
	D. S. Cobb	Williamston—Accounting.

The Chairman outlined the proceedings at the joint meeting in Petersburg and gave his favorable opinion of our new lawyer Mr. Wm. Earle White.

Minutes of the joint meeting with Norfolk at Petersburg were read by Secretary and approved.

The Chairman introduced question of proper place to hold future meetings. General discussion brought out that outside meeting place is essential for all future activities of Committee. Mr. Roberson was appointed by Chairman to secure places for all subsequent meetings of Steering Committee and other groups.

5657 A sample Constitution submitted by lawyer, Wm. Earle White, was read by Chairman.

A general discussion then followed on the Constitution and proposed changes.

Article I. O. K.

Article II. O. K.

Article III. Mr. Ballard made a motion which was seconded by Mr. Roberson to require a person to be employed for at least ninety days before being eligible for membership. Motion was passed unanimously.

Article IV Section 2 (b). Two Voting Sections were proposed.

1. Production and Transmission.

2. Distribution and Installation. (Not satisfactory provides for representation of outside Districts.)

Article V. O. K.

Article VI. Section 1. See about having some bulletin facilities on Company property. O. K.

Article VII. Section 2. Four days notice. Section 4. Audition of books.

Article VIII. Semiannually in advance ($3.00).

There was no further discussion of Constitution at this time.

Representatives from Williamston said they were not interested in any form of Organization. They were supplied with copies of all previous minutes.

Motion made for Committee to be made up of one man from each Department to go to Petersburg.

Mr. Wash	Transportation.
Padera	Distribution.
Roberson	Production.
Clarke	Accounting.

Discussion turned to the Declaration of Constitution.

Article I. Broaden to include general interests of employees.

Article II. Purposes. To be similarly broadened as Declaration.

Article IV. Section 1. Place Gas Division as Third Voting Division. Place Accounting and Sales in Fourth Voting Section, and make all indusive to include General Office employees.

Section 2. Broaden to include Office employees for the Transportation Division.

Article VI. Simplify nomination and Election procedures. Too cumbersome and expensive. Have general meeting preceding Election date and have nominations at that time, or have a nomination Committee, then have election of these nominees in manner proposed.

Section 7. Clarify meaning of Seniority.

Article VII. Should have a provision for first meeting of Council.

Section 3. Should be d finition of term "Company."

A. D. BORTOLEIT.

5658 *I. O. E. Exhibit 36*

VIRGINIA STATIONERY CO., INCORPORATED,
LITHOGRAPHERS-PRINTERS, ENGRAVERS.
Richmond, Virginia, June 16, 1937.

3,000 C3 ½	83.75
100 Notice of Nomination and Election 4 form on one piece paper	12.50
3,000 Nomination Ballot and instruction to voters	14.50
3,000 #6¾ Envelopes—printed	13.50
3,000 #6¾ Envelopes—not printed	
6,000 insertions, @ $1.00 per 1,000	6.00
3,000 Election Ballot and instructions to voters	16.50
	83.00
Constitution and Bylaws	
Pages (Estimated 30 pages) per page	1.50
Cover (per page)	5.00
3,000 copies complete:	
Booklet	45.00
Cover	5.00
Membership Card	$3.00 M.
Letterheads	7.50 M.
Envelopes	6.00 M.

Complete in 1 week from order (working days).

5659 *I. O. E. Exhibit 38*

JUNE 23, 1937.

MINUTES

A meeting of the Steering Committee for I. O. E. of V. E. & P. Co. was held at the American Legion Hall, Richmond, Virginia, at 8:00 P. M., for the purposes expressed in Notice of Meeting dated June 21.

The meeting was called to order by the Chairman, Mr. Eugene Underwood, of Richmond.

The Chairman introduced Mrs. Jessie M. Fletcher as Stenographer and Office Manager, with explanation of the necessity of employing someone in that capacity to assist in the handling of

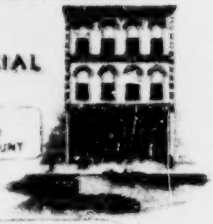
VIRGINIA STATIONERY COMPANY

INCORPORATED

RICHMOND, VA.

BANK AND COMMERCIAL STATIONERS





AMOUNT

NET CASH $ 23 00 NO DISCOUNT

INDEPENDENT ORGANIZATION OF EMPLOYEES
VA. ELECTRIC & POWER CO.
CITY

JUN 28 1937

TO LESSEN THE INCONVENIENCE INCIDENT TO RECEIPTED BILLS, THIS HEADING MAY BE DETACHED AND MAILED WITH REMITTANCE. A CANCELLED CHECK WHEN RETURNED BY THE BANK CONSTITUTES A VALID RECEIPT.

NAME INDEPENDENT ORGANIZATION OF EMPLOYEES JUN 28 1937

Purchased from **Virginia Stationery Co., Inc.**, Paid on ____ 19 ____ Check No. ____

STATEMENT OF YOUR ACCOUNT. CHARGES AFTER THE 20th WILL APPEAR ON NEXT MONTHS' STATEMENT.

DATE	ARTICLES	CHARGES	CREDITS
	As per bill rendered		
21	3 M MEMBERSHIP & ACCEPTANCE CARDS 19.50		
	1 3X5 A TO Z INDEX .25	19.75	
24	500 MEMBERSHIP APPLICATION CARDS PD.	3.50	
22	1 3X5 A TO Z INDEX		.25
		23.25	

Paid Comm'ty 7/29/37

NATIONAL LABOR RELATIONS BOARD
CASE NO. 19 EXHIBIT 37
IN THE MATTER OF
7/15/38 WITNESS
THELE ESHIST
BY

5659

correspondence, records, files, etc., until such time as the organization has been set in motion, in order to avoid delay and irregularity. This met with general approval.

The roll was called by Mr. A. D. Bertolett, Secretary, and the following representatives were present:

Messrs.	Butler	Petersburg.
	Brown	Roanoke Rapids.
	Harris	Roanoke Rapids.
	Bray	Petersburg.
	Wash	Richmond.
	Edwards	Richmond.
	Kersey	Richmond.
	Shelley	Richmond.
	Woodcock	Carpenter Shop.
	Gordon	Electric Shop.
	Voorhees	Overhauling Shop.
	Shaw	Colored Representative.
	Roberson	Richmond.
	Quinlan	Production.
	Shepherd	Petersburg.
	Padera	Petersburg.
	Underwood	System Engineering and System Operating.
	Hoggard	General Accounting.
	Eggleston	A. R. C. Dept.
	Stoughton	Lines—Richmond.
	Riner	Underground.
	Bowman	Line Department.
	Childress	Line Department.
	Earnhart	Line Department.
	Corker	Line Department.
	Clark	Line Department.
	Bertolett	Distribution Dept.
	N. S. Phillips	Engineering.
	Bryant	Service Department.
	C. A. Phillips	Service Department.
	Bryant	Service Department.
	English	Meter Department.
	Points	Engineering Department.
	Vaden	Williamsburg.
	Shelton	Fredericksburg.

5662

Messrs.	Little	Purchasing Department.
	Page	Sales Department.
	Anderson	Richmond Stores.
	Barham	Transmission Dept.
	Herman	Production Dept.
	Jowett	Line Dept.
	Stratton	Line Dept.
	Bagby	Bus Dept.
	Wood	Bus Dept.
	Slater	Inspection Dept.
	Rogers	Line Dept.
	Shearin	Line Dept.
	Mrs. Anthony	Telephone Operator.
	Shelton	Fredericksburg.
	Stuart	12th Street.
	Daffron	12th Street.
	Richard Joseph	Shops.
	Joseph Gaines	12th Street.
	Colandyes	12th Street.
	Oliver	Shops.

The Chairman made a statement concerning the importance of completing the signing of membership cards at the earliest possible moment, and requested a report on the number of cards thus far signed in each group. A general check-up developed a total of 1401 employees represented, with 1066 signed membership cards, indication that about 75% have signed up—with no report from Williamston, North Carolina, or the Richmond Track Department.

A collection was then made of the 25c contributions to the general fund to finance meetings, etc., $136.50 being collected and turned over to the Treasurer.

Mr. Bertolett then gave the Treasurer's report, which was approved as read.

The Committee selected to obtain offices and a meeting hall reported that after a thorough canvass of the leading real estate agents of the city the following offices in a central location were found to be available:

Second floor of the building occupied by the Hoffheimer Shoe Store at Third & Broad Sts., used about eight years ago as a dance hall, since which time it has not been occupied. It has gas heat, has very few conveniences, is extremely dirty and badly in need of repair, and has no separate office space. Rental $27.50 per month, with nothing at all furnished, and they would not put in any partitions or make any repairs.

A third floor at Second & Broad Sts., which also has not been used for a number of years, is very dirty, needs repairing, etc. Heat is furnished, lights, and janitor service separate. No repairs would be made. Rental $50.00 per month.

5662 A third floor at Second & Broad Sts., which at the present time is being used as a meeting house by several different factories. It has a very good auditorium, stage, and about fifty chairs, and is in usable condition. Lights, heat, janitor service are not furnished. In order to obtain that it would be necessary to give a year's lease, and the parties now using it would have to be given thirty days' notice. Rental $50.00 per month.

Space on third floor of a building occupied by Schmidt & Wilson at Fourth & Franklin Sts., which is immediately available. It is newly painted, the floors are in good condition, light, heat, and janitor service furnished. One room, 40 x 16, can be rented by the month for $40.00. Adjoining this room are two other rooms and two hall spaces, which are available for an additional cost of $20.00 per month, making a total of $60.00 per month for the entire space that is available on that floor.

If found to be suited to the future needs of the Organization, for a one-year lease they will remove partitions to make the large room approximately 50 x 25.

A general discussion was had, and Mr. Wash stated his group can temporarily continue to meet in their present hall. The Chairman suggested that outlying groups hire a hotel room for their preliminary meetings, and a motion was made that each district be reimbursed by the Central Committee for any expense incident to the securing of such hall for preliminary meetings. The motion was seconded and carried unanimously.

Following the general discussion of the Committee's report, a motion was made that the group of offices offered by Schmidt & Wilson for $60.00 per month be rented for the month of July. The motion was seconded and carried unanimously.

The Chairman directed attention to the desirability of holding elections of officers as speedily as possible, and suggested that ballots, etc., be furnished each representative. Mr. Shepherd called attention to the fact that important technical questions are involved in the election procedure, and recommended that the question of election dates, etc., be discussed with a lawyer before proceeding further. He also recommended that Norfolk be contacted, to determine the progress made there in the signing of membership cards. These recommendations met with general approval, and the Chairman stated further that although we should no doubt confer with a lawyer, there was no reason why we could not now make our plans in a general way, and determine the specific dates later. Mr. Page made general remarks concerning the importance of speed, particularly as affected by vacations of members.

After a general discussion, a motion was made that authority be taken under the bylaws to proceed with the elec-
5663 tions with all speed consistent with the constitution and bylaws. The motion was seconded and carried unanimously.

As a basis for determining the names of members to be grouped under the respective voting sections, Mr. N. S. Phillips checked a list of all the employees in the Richmond Division, with the various representatives at the meeting under whose jurisdiction these members came. This list, so checked, shall be, for the purposes of the first elections, the basis for determining the membership of the various voting sections in the Richmond Division.

The final business of the meeting consisted of distributing to the representatives who came from outlying districts sealed

ballot boses to be used in their nomination and election procedure.

The meeting was adjourned by general assent at 11:00 o'clock.

A. D. BERTOLETT, *Secretary.*

Approved:

E. T. UNDERWOOD, *Chairman.*

By J. MF.

5664 *I. O. E. Exhibit 39*

JUNE 29, 1937.

A meeting of the Steering Committee of the I. O. E. of V. E. & P. Co. was held at the office of the Organization at 401 East Franklin Street, Richmond, Virginia, this evening, for the purposes outlined in Notice of meeting dated June 26. The meeting was called to order by the Chairman, E. T. Underwood, at 8 o'clock.

The Chairman expressed appreciation of the kindness of the L. T. Christian Funeral Parlors in furnishing, free of charge, 50 chairs to be used for this meeting. The Secretary proposed that he write a letter of appreciation, which was unanimously approved.

The roll was called by A. D. Bertolett, Secretary, and the following representatives were present:

Messrs. Butler	Petersburg.
Bray	Petersburg.
Wash	Richmond.
Edwards	Richmond.
Kersey	Richmond.
Shelley	Richmond.
Woodcock	Carpenter Shop.
Voorhees	Overhauling Shop.
Shaw	Colored Representative.
Robertson	Richmond.
Shepherd	Petersburg.
Padera	Petersburg.
Underwood	System Engineering and System Operating System Operator.
Hoggard	General Accounting.
Eggleston	A. R. C. Dept.
Staughton	Lines—Richmond.
Bowman	Lines Department.
Childress	Lines Department.
Earnhart	Lines Department.
Bertolett	Distribution Dept.
Phillips	Engineering Dept.
English	Meters Department.
Points	Engineering Department.
Little	Purchasing Department.
Page	Sales Department.
Barham	Transmission Department.
Rigby	Bus Department.
Slater	Inspection Department.
Stuart	12th Street.
Joseph Gaines	12th Street.
A. C. Keith	Electric Shop.
Stuart	Sottes.
Coe	12th Street.

	Pilkinton	System Engineering.
	Hickey	Petersburg Sales.
	Haddocks	Richmond, Railway.
5665	Johnson	Petersburg, Transmission.
	Essig	Petersburg, Transportation.
	Hardy	Petersburg, Transportation.
	D. W. Palmore	Richmond, Railway.
	A. C. Andrews	Petersburg, Accounting.
	F. P. Vaughan	Petersburg, Accounting.
	Milburn	Petersburg, Distribution.
	R. I. Smith	Richmond, Railway.
	C. B. Homan	Richmond Bus.
	L. D. Riggs	Richmond Bus.
	W. A. Slaybaugh	Richmond, Railway.
	T. M. Ballard	Richmond, Bus.
	A. L. Clarke	Richmond, Accounting.
	W. E. James	Richmond, Bus Shops.
	Frank Greet	Richmond, Bus Shops.
	Chas. Welsey	Richmond, Stores.
	A. J. Thacker	Richmond, Purchasing.
	Daffron	Richmond, Accounting.

The minutes of the meeting held June 23 were read by the Secretary, and were approved.

A report was given by Mr. Phillips, Chairman of the Committee appointed to purchase office furniture and supplies. Mr. Phillips reported that chairs for the meeting hall could be rented for ten cents each per week, making the rental for 100 chairs $10 per week, or $40.00 per month; that such chairs cannot be found in quantity in the second-hand market, but that new chairs can be purchased for $1 to $1.25 each. After a general discussion of Mr. Phillips' report, the question of purchase or rental of chairs was put to a vote.

In Favor of Purchasing, 32.

Opposed to Purchasing, 22.

Mr. Phillips suggested that the matter be postponed a few days, in order to ascertain whether chairs could be rented for not more than $10 for the month of July. The Chairman agreed that inasmuch as the vote was so divided, action should be postponed, directing attention to the fact that none but the Steering Committee is eligible to vote on such questions.

Mr. Bertolett made a motion that a committee be appointed to investigate the matter of renting chairs for $10 per month, and if it develops that the chairs can be so rented, to do so; but if not, to purchase chairs, rather than pay $40 per month rental. The motion was seconded and carried, and Mr. Phillips was appointed Chairman of the Committee to investigate and report on the matter. Mr. Little and Mr. Stuart were appointed to assist him.

The Secretary read the financial report, as follows: To July 1, total receipts $261.75; total disbursements $144.59; balance $11.16.

Approved as read.

5666 The Chairman called attention to the fact that money is needed for rent and other obligations, and requested that an effort be made to collect the amount due on 25¢ contributions to the general fund.

The Secretary read a letter which was written today to the outlying Voting Districts concerning the conduct of elections. He also made remarks stressing the importance of holding the elections off Company property, and suggesting that some groups who do not have a convenient place to hold their elections park a car in the street outside Company property and conduct the elections therefrom.

A meeting was called for 8 o'clock Tuesday evening, July 6th, for the purpose of reporting results of Nominations. Representatives were directed to preserve and turn over to the Secretary all outside envelopes bearing the names of the voters, as well as the Ballots.

The Chairman called attention to the importance of posting the Notices of Nomination and Election the morning of June 29, in order to conform to the Constitution, which stipulates that such notices be posted at least two weeks before elections. He also impressed upon the representatives that Election Inspectors be careful to make no suggestions concerning the voting, and that Company's time and property not be used.

There was a general discussion in regard to the time required for all the employees to vote, due to shift work and the fact that the men in some of the Voting Sections are widely scattered. Mr. Padera recommended that the time limit be left to the discretion of the representative of each Voting Section, but that it should not exceed two days, which met with general approval. Mr. Bertolett suggested that in those departments where it is necessary, the balloting be carried on until Tuesday night, in time to have the reports ready for the meeting which is called for Tuesday evening.

At this point, Mr. Padera suggested the reading of the rules covering election procedure. The Secretary read that portion of the Constitution concerning such procedure, pointing out that the same procedure applies to Nominations.

The Chairman instructed Voting Sections representatives to obtain from the office Nomination and Election Notices, Ballots required, and Ballot Boxes.

The Voting Section representatives and Election Inspectors were named as follows:

BUS VOTING SECTION

M. E. Wash, Representative. C. D. Homan, Inspector.
L. D. Griggs, Inspector. E. E. Bagby, Inspector.

5667

RAILWAY VOTING SECTION

L. B. Edwards, Representative.
R. I. Smith, Inspector.
W. A. Slaybaugh, Inspector.
Grayson Palmore, Inspector.

SHOP VOTING SECTION

C. W. Kersey, Representative.
J. M. Slater, Inspector.
J. J. Oliver, Inspector.
M. T. Barnett, Inspector.
A. L. Woodcock, Inspector.
J. H. Shelley, Inspector.
Matthew Shaw, Inspector.
W. C. Voorhees, Inspector.
W. E. James, Inspector.

TRACK VOTING SECTION

Thomas Anderson, representative.
Charles Wesley, Inspector.
George Ford, Inspector.
Sam Burleigh, Inspector.

PROD. OPER VOTING SECTION

George Colonies, representative.
E. S. Quinlan, Inspector.
Forrest Simmons, Inspector.

PROD. MAINT. VOTING SECTION

L. F. Robertson, representative.
T. A. Stuart, Inspector.
A. L. Cole, Inspector.
Joseph Gaines, Inspector.

DIST CONST. VOTING SECTION

N. Staughton, representative.
J. E. Childress, Inspector
W. M. Bowman, Inspector.
W. S. Earnhardt, Inspector.
W. S. Shearin, Inspector.

DIST. ENG. & INST. VOTING SECTION

A. D. Bertolett, representative.
N. S. Phillips, Inspector.
L. C. English, Inspector.
C. L. Point, Inspector.
C. A. Phillips, Inspector.

TRANSMISSION VOTING SECTION

T. I. Barham, representative.
A. F. Johnson, Inspector.

SYSTEM ENG. VOTING SECTION

E. T. Underwood, representative.
W. W. Pilkinton, Inspector.

SALES VOTING SECTION

C. C. Page, Representative. J. M. LaVier, Jr., Inspector.

ACCOUNTING VOTING SECTION

A. L. Clarke, representative. W. M. Eggleston, Inspector.
W. C. Daffron, Inspector. W. B. Stuart (stores), Inspector.
W. J. Hoggard, Inspector.

5668 GENERAL VOTING SECTION

H. J. Little, representative. T. D. Stuart, Inspector.
A. J. Thacker, Inspector.

PETERSBURG SALES VOTING SECTION

George J. Shepherd, Rep. R. F. Wood, Inspector.
R. J. Hickey, Inspector.

PETERSBURG DISTRIBUTION VOTING SECTION

Charles C. Padera, Rep. R. K. Milburn, Inspector.

PETERSBURG BUS VOTING SECTION

J. L. Butler, Representative. J. A. Cameron, Inspector.
J. E. Hardy, Inspector. R. L. Whitaker, Inspector.
George Essig, Inspector.

ACCOUNTING PETERSBURG VOTING SECTION

F. B. Vaughan, Representative. W. S. Sykes, Jr., Inspector.
A. C. Andrews, Inspector.

SHOP PETERSBURG VOTING SECTION

J. C. Bray, Representative. H. M. Thompson, Inspector.

The meeting was adjourned by general assent at 9:30 o'clock.

A. D. BERTOLETT, *Secretary.*

Approved:

E. T. UNDERWOOD, *Chairman.*

By JMF.

5669 *I. O. E. Exhibit 7*

JULY 6, 1937.

MINUTES

A special meeting of the Steering Committee of the I. O. E. of V. E. & P. Co. was held at the office of the Organization at 401 East Franklin Street, Richmond, Virginia, for the purpose of voting on the question of purchasing or renting chairs for the Meeting Hall. The meeting was called to order by E. T. Underwood, Chairman, at 10:00 o'clock.

The members of the Committee were present as shown in the minutes of meeting held at 8:00 o'clock the same date.

The Chairman stated that while all members present at previous meetings had been allowed to vote on various questions, yet none but the Steering Committee is eligible to vote on questions binding the future General Committee; therefore, the vote in the previous meeting was illegal.

After a general discussion of the question, Mr. Page moved that the purchase of chairs be left to the General Committee. The motion was seconded and put to a vote.

In Favor 9.

Opposed 4.

Mr. Page moved for adjournment. The motion was seconded by Mr. Collins and put to a vote.

In Favor 4.

Opposed 9.

A general discussion was had in regard to the financial status of the Organization. Mr. White advised that if it developed there would be delay in the collection of dues by the Company, the only thing to do would be to call on the members to pay the first semi-annual dues to the Organization direct, and let the Company check-off start on the second semiannual dues. He also stated that if the Company should agree to a check-off before agreeing to other requests, it might to be brought before the Labor Relations Board as evidence of aid.

Mr. Wash made general remarks concerning the desirability of holding expenses down to a minimum, and to proceed with the election of Committees with all speed consistent with proper organization.

Mr. Butler moved for adjournment at 10:30 o'clock, which was seconded by Mr. Wash, and carried.

A. D. BERTOLETT, *Secretary.*

Approved:

E. T. UNDERWOOD, *Chairman.*

5670 *I. O. E. Exhibit 41*

JULY 6, 1937.

MINUTES

A meeting of the Steering Committee of the I. O. E. of V. E. & P. Co. was held at the office of the Organization at 401 East Franklin Street, Richmond, Virginia, for the purpose of consolidating reports of the Nomination balloting, declaring Nominees in each Voting Section, and making plans for the forthcoming Election. Mr. Earle White, Counsel, of Petersburg, Virginia, was present, by invitation. The meeting was called to order by E. T. Underwood, Chairman, at 8:00 o'clock.

The roll was called by A. D. Bertolett, Secretary, and the following representatives were present:

Messrs.	Butler	Petersburg.
	Bray	Petersburg.
	Wash	Bus.
	Edwards	Railway.
	Kersey	Shop.
	Shelley	Richmond.
	Woodcock	Carpenter Shop.
	Shaw	Colored representative.
	Voorhees	Overhauling Shop.
	Roberson	Richmond.
	Padera	Petersburg.
	Underwood	System Engineering and Operating System Operator.
	Hoggard	General Accounting.
	Staughton	Line—Richmond.
	Bertolett	Distribution.
	Phillips	Engineering.
	Point	Engineering.
	Little	Purchasing.
	Page	Sales.
	Slater	Inspection.
	Stuart	12th Street.
	Stuart	Stores.
	Pilkinton	System Engineering.
	Hickey	Petersburg Sales.
	Hardy	Petersburg Transportation.
	Andrews	Petersburg Accounting.
	F. V. Vaughan	Petersburg Accounting (Acting for Shepherd).
	Milburn	Richmond, Railway.
	Smith	Richmond, Accounting.

Clarke	Bus Shops.
James	Bus Shops.
Green	Bus Shops.
Daffron	Accounting.
Colonies	12th Street.
Sykes	Petersburg.
Cassidy	Petersburg Operating.
Ford	Petersburg Transportation.
Gillespie	Petersburg Operating.
Stuart	Purchasing.
Shelton	Fredericksburg.

3671 The minutes of the last meeting, held June 29, were read by the Secretary. Mr. Page remarked his understanding was that only the Steering Committee was eligible to vote on the question of purchasing chairs, and the Chairman stated that a meeting of the Steering Committee would be held at the close of the meeting then in session, in order to properly dispose of this question. The minutes were approved as read.

The Chairman requested a report from the Committee appointed to investigate the matter of rental of chairs for the Meeting Hall. Mr. Phillips, Chairman of the Committee, reported that 100 chairs were rented from The Joseph W. Bliley Co., Inc., at a cost of $8.75 per week, and that the chairs may be retained for as many weeks as desired.

The Chairman directed attention to the importance of collecting the 25c initiation fee from all who have signed membership cards.

A report of Nomination Balloting was made by each Voting Section, as follows:

TRANSPORTATION VOTING DIVISION

BUS VOTING SECTION—M. E. WASH, REPRESENTATIVE

M. E. Wash	173
T. M. Ballard	91
E. E. Bagby	21

M. E. Wash and T. M. Ballard declared Nominees.

RAILWAY VOTING SECTION—L. B. EDWARDS, REPRESENTATIVE

L. B. Edwards	129
R. I. Smith	88
L. T. Haddock	45

L. B. Edwards and R. I. Smith declared Nominees.

SHOP VOTING SECTION—C. W. KERSEY, REPRESENTATIVE

C. W. Kersey	116
Matthew Shaw	61
W. C. Voorhees	41

C. W. Kersey and Matthew Shaw declared Nominees.

TRACK-MEN VOTING SECTION—THOMAS ANDERSON, REPRESENTATIVE

Thomas Anderson	58
Charles Wesley	54
Garfield Chandler	58

Thomas Anderson and Charles Wesley declared Nominees.

5672 ELECTRIC VOTING DIVISION

PRODUCTION OPERATING VOTING SECTION—GEORGE COLONIES, REP.

George Colonies	67
E. S. Quinlan	20
Frank P. Crowell	16

George Colonies and E. S. Quinlan declared Nominees.

PRODUCTION MAINT. & CONSTR. VOTING SECTION—G. A. ROBERSON

G. A. Roberson	33
T. A. Stuart	28
A. L. Cole	18

G. A. Roberson and T. A. Stuart declared Nominees.

DISTRIBUTION CONST. VOTING SECTION—N. STAUGHTON, REPR.

N. Staughton	75
B. T. Bryant	35
R. K. Gilbert	26

N. Staughton and B. T. Bryant declared Nominees.

DISTRIBUTION ENG. & INST. VOTING SECTION—A. D. BERTOLETT, REPR.

A. D. Bertolett	58
N. S. Phillips	36
C. L. Point	18

A. D. Bertolett and N. S. Phillips declared Nominees.

TRANSMISSION VOTING SECTION—T. I. BARHAM, REPR.

T. I. Barham	11
C. M. Herron	4
L. C. Kidd	3
A. F. Johnson	3

T. I. Barham and C. M. Herron declared Nominees.

SYSTEM ENG. & OPR. VOTING SECTION—E. T. UNDERWOOD, REPR.

E. T. Underwood	19
W. W. Pilkinton	12

E. T. Underwood and W. W. Pilkinton declared Nominees.

5673 ACCOUNTING SALES AND GENERAL OFFICE VOTING DIVISION

ACCOUNTING VOTING SECTION—A. L. CLARK, REPRESENTATIVE

A. L. Clark	77
W. J. Hoggard	22
W. M. Eggleston	19

A. L. Clark and W. J. Hoggard declared Nominees.

SALES VOTING SECTION—C. C. PAGE, REPRESENTATIVE

L. L. Bond	12
G. J. Shepherd	9
C. C. Page	8

L. L. Bond and G. J. Shepherd declared Nominees.

OFFICE PERSONNEL VOTING SECTION—H. J. LITTLE, REPR.

H. J. Little	30
T. D. Stuart	17
Juanita B. Seay	12

H. J. Little and T. D. Stuart declared Nominees.

The Above Nominations were certified by the Steering Committee, and the Chairman announced that Notices certifying the Nominations would be mailed to the Nominees; also that Notices of Nomination for posting would be mailed to the representative of each Voting Section.

The Chairman issued general instructions concerning election procedure, stressing the importance of complying with the provisions of the Constitution and Bylaws, and pointing out that one of the first duties of the representatives elected would be to select Grievance Committees, which would be the main representation of the smaller districts. The Secretary read the Article of the Constitution pertaining to the election of Grievance Committees. The Chairman remarked on the delay incident to the Nominations and Elections, and requested Mr. White's opinion as to the best means of getting a Grievance Committee organized, and if possible to amend the bylaws to that effect.

Mr. White stated there is a distinction between the functioning of the Grievance Committee and the General Committee, and that matters pertaining to wages, hours, working conditions, etc., are not matters for the Grievance Committee, but for the Division Committees. He suggested that as soon as the Division Committees are organized, a meeting be called in order to obtain the sense of the members of each Division as to what they wish to have in a contract with the Company; that strictly speaking, it is not necessary to have a Grievance Committee immediately, and that it can be deferred until the General Committee is elected. He
5674 also stated there is no way to amend the Constitution Bylaws until after the Organization is set up; then after it is set up, this can be decided by a vote of the General Committee. He suggested that unofficial committees be set up in each Voting Section in each District, to approach the men and obtain general ideas from their constituents, as to working conditions, rate of pay, hours, etc. These Committees would then report their findings to the organization when it is established, their findings to serve as a basis for discussion by the General Committees.

Mr. White also suggested getting word to Norfolk on this, as no doubt there will be differences of opinion between various members of the Committee. The Chairman agreed that after the Division Committees have been elected there should be a joint meeting of the Committees in order to determine what procedure to follow.

There was a general discussion of the question of demands to be made, etc., and Mr. White explained that each Division stands on its own; that matters affecting any particular Voting Section will go to the Division Committee for approval, also to the General Committee as relating to all employees.

The Chairman invited discussion on the question of who should contact the men in order to develop what their ideas may be as to what should be included in the contract to be made between the Organization and the Company, and it was generally agreed that the Nominees in each group will start the ball rolling.

Mr. White gave a general report on his trips to Washington and Norfolk. In Washington he contacted a lawyer, Paul Hadley, who is in frequent touch with the General Counsel of the National Labor Relations Board. Mr. White outlined to Mr. Hadley the nature of our organization and its procedure, and asked various questions pertinent to the matter of separate individual labor organizations. The replies were generally satisfactory to our point of view.

Representatives of the Voting Sections were instructed to obtain ballots, etc., from the office, and the Chairman directed attention to the fact that the Inspectors who were nominated are disqualified to serve in the Election, and that other Inspectors will have to be appointed.

There being no further business before the meeting, motion was made for adjournment, which was seconded and passed, and the meeting was adjourned at 9:55 o'clock.

A. D. BERTOLETT, *Secretary.*

Approved:

E. T. UNDERWOOD, *Chairman.*

5675 *I. O. E. Exhibit 14*

JULY 16, 1937.

A meeting of the Steering Committee of the I. O. E. of V. E. & P. Co., and Election Inspectors, was held at the office of the Organization at 401 East Franklin Street, Richmond, Va., July 16, 1937, for the purpose of consolidating election returns and certifying the election of the thirteen representatives who will constitute the Richmond Interdepartmental Committee; also for the purpose of electing officers of that Committee. The meet-

ing was called to order by E. T. Underwood, Chairman, at 8:30 P. M.

The roll was called by A. D. Bertolett, Secretary, and the following representatives were present:

Messrs.	Butler	Petersburg.
	Bray	Petersburg.
	Wash	Bus.
	Edwards	Railway.
	Kersey	Shop.
	Shelley	Richmond.
	Roberson	Richmond.
	Underwood	Richmond.
	Staughton	Richmond Line.
	Bertolett	Distribution.
	Phillips	Engineering.
	Point	Engineering.
	Little	Purchasing.
	Slater	Inspector.
	Hardy	Petersburg Transportation.
	Andrews	Petersburg Accounting.
	F. B. Vaughan	Petersburg Accounting.
	Milburn	Petersburg Distribution.
	Daffron	Accounting.
	Colonies	12th Street.
	Sykes	Petersburg.
	Shelton	Fredericksburg.
	Shepherd	Petersburg.
	Barham	Petersburg.
	Earnhardt	Richmond Construction.
	Bowman	Richmond Construction.
	English	Distribution Engineering.
	Anderson	Colored representative.
	Allen	Petersburg.
	Cole	Richmond.
	Herman	Richmond.
	Homan	Richmond.
	Griggs	Richmond.
	Pierce	Richmond.
	Simmons	Richmond
	Oliver	Bus Shop.
	Wesley	Track.
	Bryant	Line Department.
	Thompson	Petersburg Shop, Bus.
	Wakefield	
	Leach	Petersburg.

5676 The Secretary read the minutes of the last meeting, held July 6, which were approved as read.

A report was made by the Inspectors of Election, on the election of members of the Richmond Interdepartmental Committee:

TRANSPORTATION VOTING DIVISION

BUS VOTING SECTION

M. E. Wash	139
T. M. Ballard	4

M. E. Wash declared elected

RAILWAY VOTING SECTION

L. B. Edwards 132
R. I. Smith 43

L. B. Edwards declared elected.

SHOP VOTING SECTION

C. W. Kersey 132
Matthew Shaw 34

C. W. Kersey declared elected.

TRACKMEN VOTING SECTION

Tom Anderson 56
Charles Wesley 3

Tom Anderson declared elected.

ELECTRIC VOTING DIVISION

PRODUCTION OPER. VOTING SECTION

George Colonies 51
E. S. Quinlan 11

George Colonies declared elected.

PRODUCTION MAINTENANCE & CONSTR.

G. A. Roberson 45
T. A. Stuart 11

G. A. Roberson declared elected.

DISTRIBUTION CONST. VOTING SECTION

N. Staughton 86
B. T. Bryant 21

N. Staughton declared elected.

DISTRIBUTION ENG. & INST. VOT. SEC.

A. D. Bertolett 53
N. S. Phillips 31

A. D. Bertolett declared elected.

TRANSMISSION VOTING SECTION

T. I. Barham 11
C. M. Herron 1

T. I. Barham declared elected.

5677 SYSTEM ENG. & OPR. VOTING SECTION

E. T. Underwood 18
W. W. Pilkinton 2

E. T. Underwood declared elected.

ACCOUNTING VOTING SECTION

A. L. Clark 53
W. J. Hoggard 44

A. L. Clark declared elected.

SALES VOTING SECTION

L. L. Bond 7
G. J. Shepherd 18

G. J. Shepherd declared elected.

OFFICE PERSONNEL VOTING SECTION

H. J. Little 40
T. D. Stuart 12

H. J. Little declared elected.

The Chairman expressed appreciation of the manner in which the election was handled.

The next business before the meeting was the election of a Chairman of the Richmond Interdepartmental Committee. Mr. Underwood was nominated by Mr. Wash, and unanimously elected.

The next business was the election of a Secretary of the Richmond Interdepartmental Committee. Mr. Bertolett and Mr. Clark were nominated, and upon a vote Mr. Clark was elected.

Mr. Colonies suggested a rising vote of thanks for Mr. Bertolett, and appreciation for the work he has done in behalf of the Organization.

The Chairman suggested that in order to avoid delay in the meeting in Norfolk, the Voting Divisions should at this time elect their representative to the General Committee. The meeting was recessed while the Voting Divisions Nominated and elected their representatives to the General Committee. When the Divisions reported that they had elected their representatives to the General Committee the meeting was called to order, and reports made from the individual Voting Divisions.

Mr. Wash, of the Transportation Division, reported that he (Mr. Wash) had been unanimously elected to the General Division from that Division.

Mr. Roberson, of the Electric Division, reported that Mr. Bertolett had been unanimously elected to the General Committee from that Division.

5678 Mr. Shepherd, of the Accounting, Sales & General Office Division, reported that Mr. Clark had been unanimously elected to the General Committee from that Division.

The Chairman stated the nominations would be made at this time for the election of a representative at large from the Interdepartmental Committee, to the General Committee. Mr. Butler nominated Mr. Underwood, and Mr. Wash nominated Mr. Edwards. Upon a vote, Mr. Underwood was elected as the representative at large from the Interdepartmental Committee to the General Committee.

The Chairman stated that transportation had been provided for attending the meeting in Norfolk on Saturday and Sunday, July 17 and 18, and that all representatives should meet at the office of the Organization at 8:30 A. M., Saturday.

There being no further business before the meeting, motion was made for adjournment, which was seconded and passed, and the meeting was adjourned at 10:00 o'clock.

A. L. CLARK, *Secretary.*

Approved:

E. T. UNDERWOOD, *Chairman.*

5679 BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. C-914

In the Matter of VIRGINIA ELECTRIC & POWER COMPANY *and* TRANSPORT WORKERS UNION OF AMERICA

Case No. C-915

In the Matter of VIRGINIA ELECTRIC & POWER COMPANY *and* AMALGAMATED ASSOCIATION OF STREET, ELECTRICAL RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, AN UNINCORPORATED ASSOCIATION

Case No. C-916

In the Matter of VIRGINIA ELECTRIC & POWER COMPANY *and* INTERNATIONAL BROTHERHOOD OF ELECTICAL WORKERS

Mr. Gerhard P. Van Arkel, Mr. Reeves R. Hilton, and Mr. Samuel M. Spencer, for the Board.

Hunton, Williams, Anderson, Gay & Moore, by Mr. T. Justin Moore and Mr. George D. Gibson, of Richmond, Va., and Venable, Miller, Pilcher & Parsons, by Mr. Roman Miller, of Norfolk, Va., for the respondent.

Mr. T. H. Latham, of Virginia Beach, Va., and Mr. E. D. Bieretz, of Washington, D. C., for the I. B. E. W.

Mr. Arthur E. Reyman, of New York City, Mr. Floyd Kreisel, of Columbus, Ohio, and Zimring and Rabe, by Mr. O. David Zimring, of Chicago, Ill., for the Amalgamated.

White, Temple, Hamilton & Wyche, by Mr. W. Earl White, of Petersburg, Va., and Mr. Paul Hadlick, of Washington, D. C., for the I. O. E.

Mr. Harry E. Selekman, of counsel to the Board.

Feb. 27, 1940

Statement of the Case

On July 20, 1937, Transport Workers Union of America, herein called the T. W. U., filed with the Regional Director for the Fifth Region (Baltimore, Maryland) charges that Virginia Electric and Power Company, Richmond, Virginia,[1] herein called the respondent, had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 26, 1937, the T. W. U. filed amended charges that the respondent had engaged in and was engaging in such unfair labor practices within the meaning of Section 8 (1), (2), and (3), and Section 2 (6) and (7) of the Act. On February 23, 1938, Amalgamated Association of Street, Electrical Railway, and Motor Coach Employees of America, herein called the Amalgamated, filed with the Regional Director charges that the respondent had engaged in and was engaging in such unfair labor practices within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act. On April 2, 1938, and on April 13, 1938, International Brotherhood of Electrical Workers, herein called the I. B. E. W., filed with the Regional Director charges and amended charges, respectively, that the respondent had engaged in and was engaging in such unfair labor practices within the meaning of Section 8 (1), (2), and (3), and Section 2 (6) and (7) of the Act. On April 13, 1938, the National Labor Relations Board, herein called the Board, acting pursuant to National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that the cases be consolidated for the purpose of hearing. On May 7, 1938, the Board, by the Regional Director, issued its complaint against the respondent alleging that respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3), and Section 2 (6) and (7) of the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent, the I. B. E. W., the Amalgamated, the T. W. U.,[2] and Independent Organization of Employees

[1] Referred to as Virginia Electric & Power Company in the complaint.

[2] The complaint and notice of hearing which were sent to Mont Crum, the person filing the amended charges for the T. W. U., were returned to the Board. The T. W. U. did not appear at the hearing nor participate in the proceedings.

of Virginia Electric and Power Company, a labor organization, herein called the I. O. E.

Concerning the unfair labor practices the complaint alleged in substance that (1) since about May 1, 1937, the respondent dominated and interfered with the I. O. E. and contributed support to it; (2) that the respondent on or about November 15, 1937, discouraged membership in the I. B. E. W. by terminating the employment of A. F. Staunton [1] and thereafter refusing to reinstate him because of his refusal to join the I. O. E. and because of his affiliation with the I. B. E. W.; on or about April 20, 1938, discouraged membership in the I. B. E. W. by terminating the employment of T. N. Harrell, Jr., and J. L. Judge,[2] and refusing to reinstate them because of their membership in the I. B. E. W. and because they had engaged in concerted activities with other employees; and that on or about May 30, 1937, the respondent discouraged membership in the T. W. U. by terminating
5681 the employment of Everard M. Mann and refusing to reinstate him because of his membership in the T. W. U. and his concerted activities with other employees; (3) that the respondent on or about August 5, 1937, entered into an agreement with the I. O. E. providing, inter alia, that membership in said organization should be a condition of employment with the respondent and that said agreement was entered into with a labor organization which had been established, maintained, and assisted by unfair labor practices, and which was not the representative of the respondent's employees as provided in Section 9 (a) of the Act; and (4) that the respondent interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act by making statements hostile and tending to discourage membership of its employees in the T. W. U., the I. B. E. W., and the Amalgamated, by maintaining surveillance over the efforts of its employees to form a labor organization, and by employing the service of detective agencies to render reports on the organizational activities of its employees.

On May 12, 1938, the I. O. E. filed a motion for intervention stating that it had entered into an agreement with the respondent on August 5, 1937, by which the respondent recognized it as the exclusive bargaining representative of all of the respondent's employees with a few exceptions and denying that the respondent had dominated, supported, or interfered with it. On May 14, 1938, the respondent filed its answer denying that it was engaged in interstate commerce and denying that it had engaged in any of the unfair labor practices alleged in the complaint.

---

[1] Referred to as Alfred Staunton in the record.
[2] Referred to as Johnny L. Judge in the record.

Pursuant to the notice, a hearing was held in Norfolk, Virginia, from May 19 to June 18, 1938, before James L. Fort, the Trial Examiner duly designated by the Board. The Board, the respondent, the I. B. E. W., the Amalgamated, and the I. O. E. were represented by counsel and participated in the hearing. The I. O. E. was permitted to intervene with respect to the alleged unfair labor practices within the meaning of Section 8 (2) of the Act. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded all parties subject, in the case of the I. O. E., to the limitation noted above. On May 21, 1938, the Amalgamated filed with the Regional Director amended charges alleging that the respondent had further engaged in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act by discouraging membership in the Amalgamated through its discharges of Joseph Bolton on or about January 15, 1938, and Robert E. Elliott, Jr., on or about November 3, 1937, and its refusals to reinstate them because of their membership in the Amalgamated. On motion of counsel for the Board the complaint was amended at the hearing to incorporate these allegations.[5] The Trial Examiner granted the motion of counsel for the Board made at the close of its case to conform the pleadings to the proof. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On September 13, 1938, the Trial Examiner filed his Intermediate Report, a copy of which was served on all parties, in which he found that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act and recommended that the respondent cease and desist therefrom and take certain affirmative action to remedy the situation resulting from the unfair labor practices. He further recommended that the allegations of the complaint relating to the discharge of Joseph Bolton be dismissed.

On September 23, 1938, the I. O. E. filed exceptions to the Intermediate Report and on September 26, 1938, the respondent filed exceptions to the Intermediate Report and a motion to dismiss
5682 the complaint. The respondent and the I. O. E. filed briefs in support of their exceptions to the Intermediate Report.

Pursuant to notice duly served on all the parties, a hearing was held before the Board in Washington, D. C., on April 11, 1939, for the purpose of oral argument. The respondent, the Amalgam-

[5] On June 16, 1938, the respondent filed an amended answer denying that it had engaged in unfair labor practices by its discharges of Bolton and Elliott.

ated, the I. B. E. W., and the I. O. E. were represented by counsel and participated in the argument. The Board has considered the exceptions to the Intermediate Report and the briefs filed in support thereof and, insofar as the exceptions are inconsistent with the findings, conclusions, and order below set forth, finds them to be without merit. The respondent's motion to dismiss the complaint is hereby denied.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. The Business of the Respondent

The respondent, Virginia Electric and Power Company, was incorporated in Virginia on June 29, 1909, as the Virginia Railway and Power Company. On October 27, 1925, it adopted its present name. The respondent is engaged, among other things, in the business of generating, distributing, and selling electrical energy in eastern Virginia and northeastern North Carolina. The area served comprises approximately 10,000 square miles, has an estimated population of 767,000, and includes the cities of Richmond, Norfolk, Portsmouth, Petersburg, Hopewell, Suffolk, and South Norfolk, Virginia, and the cities of Roanoke Rapids, Weldon, Williamston, and Plymouth, North Carolina. In addition, the respondent furnishes for resale electrical energy to nine municipal systems serving a population of 26,000. The respondent is also engaged in the business of supplying illuminating gas to consumers situated in Norfolk, South Norfolk, and Norfolk County, Virginia. The respondent likewise operates street railway and bus lines in Richmond and Norfolk, bus lines in Portsmouth and Petersburg, and local interurban bus lines between Richmond and Petersburg. Its principal office is located in Richmond, Virginia, and it maintains 14 branch offices in various cities and towns in Virginia and North Carolina. As of December 31, 1937, respondent had a total of 3,437 employees.[6]

The respondent maintains four hydro-electric generating plants and three steam generating plants with a total capacity of approximately 173,000 kilowatt hours, five of which are in Virginia and two in North Carolina, and operates approximately 250 substations. It has transmission line inter-connections with the Virginia Public Service Company at Occoquan, Virginia, and at Roanoke Rapids, North Carolina, and two transmission line

[6] In its brief the respondent asserts that on April 30, 1938, it had 1,169 employees in the electric department, 112 in the gas department, and 1,259 in the transportation department.

inter-connection with the Carolina Power and Light Company in North Carolina. During the year 1937 the respondent purchased from the above-named companies 7.1 per cent of its own total electric output. During 1937 the electric energy generated and purchased by the respondent aggregated 664,859,694 kilowatt hours, of which the respondent transmitted about 52,000,000 kilowatt hours from Virginia to North Carolina and approximately 39,000,000 kilowatt hours from North Carolina to Virginia. Among the consumers of the power generated and purchased by the respondent are railroads, telegraph companies, telephone companies, newspapers, radio stations, shipyards, airports, and agencies furnishing aid to navigation.

In addition to operating a street railway and bus system in Richmond and Norfolk, bus service in Portsmouth and Petersburg, and a local interurban bus service between Richmond and Petersburg, the respondent maintains in Virginia shops,
5683 garages, and car barns for the storing, overhauling and repairing of its street cars and motor buses. The transportation system of the respondent as of December 31, 1937, included approximately 133 miles of equivalent single track, 251 passenger street cars, and 294 busses. In 1937, the respondent's transportation department used 31,253,514 kilowatt hours of power generated by the electrical department.

As of December 31, 1937, the respondent maintained in Norfolk, Virginia, two gas generating units of approximately equal size with a total rated generator capacity of 8[illegible] million cubic feet per day, a holder capacity of 5,273,000 cubic [illegible] and 332 miles of high and low pressure gas mains. Dur[illegible]37 approximately 1,253,000 kilowatt hours of power genera[illegible] the electrical department were used in the manufacture of

For the operation of its electrical, trans[illegible]rtation, and gas systems in 1937, the respondent purchased considerable amounts of materials coming from without the State of Virginia. For the generation of electrical energy 295,207 tons of coal were used, more than 50 per cent of which were purchased in West Virginia. About 2,587,000 gallons of gasoline, consumed by the busses of the respondent, were bought in the State of Virginia but originated in sources outside the State. The busses, street cars, and tires used by the respondent were also bought in States other than Virginia. To produce the gas distributed by it the respondent consumed 10,821 tons of coal, most of which were purchased in West Virginia; 3,800 tons of coke, which were shipped to the respondent through West Virginia although purchased in Virginia, and 5,290 gallons of oil purchased in Virginia but originating in States other than Virginia.

The respondent concedes in its brief that the employees engaged in the transmission process of the electrical department are engaged in interstate commerce, but argues that all its other employees are not subject to the Board's jurisdiction. We find, however, not only (1) that the respondent maintains facilities in North Carolina and in Virginia for the generation and distribution of electrical energy; (2) that large amounts of electrical energy generated by the respondent are transmitted across State lines; (3) that the respondent purchases electrical energy which is transmitted to it across State lines; (4) and that instrumentalities of interstate commerce, such as railroads, telephone, and telegraph companies, use electrical energy supplied by the respondent; but also (5) that the respondent receives large quantities of coal, coke, and other commodities in interstate commerce for its transportation and gas departments; and (6) that the respondent is an integrated enterprise with a centralized management and general office force and with some sharing of common facilities by the transportation and electrical departments. We conclude that a cessation of the respondent's business resulting from a labor dispute between the respondent and its employees (a) would effect the flow of large quantities of electrical energy and other commodities received and distributed by the respondent in interstate commerce and (b) would tend to burden and obstruct the operation of various instrumentalities of interstate transportation and communication.[7]

II. The Organizations Involved

Transport Workers Union of America is a labor organization affiliated with the Committee for Industrial Organization,[8]
5684 admitting to its membership employees engaged in the transportation operations of the respondent.

Amalgamated Association of Street, Electrical Railway, and Motor Coach Employees of America is a labor organization affiliated with the American Federation of Labor. It admits to membership all the employees engaged in the respondent's electrical railway and bus system, excluding supervisory, office, and clerical employees.

---

[7] See Consolidated Edison Company, et al. v. National Labor Relations Board, et al., 305 U. S. 197, mod'g in part and aff'g as mod'd 95 F. (2d) 390 (C. C. A. 2), aff'g Matter of Consolidated Edison Company of New York, Inc., et al. and United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization, 4 N. L. R. B. 71; Appalachian Electric Power Co. v. National Labor Relations Board, 93 F. (2d) 985 (C. C. A. 4), rev'g on other grounds, Matter of Appalachian Electric Power Company and International Brotherhood of Electrical Workers, Local Union No. 998, et al., 3 N. L. R. B. 240.

[8] Now the Congress of Industrial Organizations.

International Brotherhood of Electrical Workers is a labor organization affiliated with the American Federation of Labor. It admits to membership all types of electrical workers of the respondent.

Independent Organization of Employees of Virginia Electric and Power Company, an unaffiliated labor organization, admits to membership all employees of the respondent excluding supervisory, part-time, and confidential employees.

III. The Unfair Labor Practices

A. BACKGROUND

The record affords only a fragmentary history of the respondent's labor relations prior to the effective date of the Act. In January 1932, the Amalgamated called a strike among the street railway operators in Norfolk, Richmond, Portsmouth, and Petersburg, upon the refusal of the respondent to renew the terms of an agreement between the Amalgamated and the respondent. The strike was unsuccessful.

Shortly after the enactment of the National Industrial Recovery Act,[9] Jack Holtzclaw, president of the respondent, in a speech to its employees, after quoting Donald Richberg and Hugh Johnson to the effect that the N. I. R. A. did not compel unionization, stated: "It would be very foolish and utterly inconsistent for the best policy of our company's operations if I did not say that it is our belief that organization of our employees for any purpose . . . in this company is entirely unnecessary."

The Amalgamated again attempted to organize the employees in 1933 and 1934 but did not meet with much success. In March 1937, one Parker, an A. F. of L. organizer, requested an interview with L. E. Davis, the chief engineer of the Reeves Avenue plant in Norfolk, to discuss the matter of organizing the men. Although such an interview was held, it does not appear that Parker ever made any efforts to organize the employees. Walter Holzbach, a clerical employee in the Richmond division, testified that an A. F. of L. organizer was distributing circulars in Richmond either in March or April 1937. The T. W. U. began to organize the Norfolk transportation employees in May 1937. The I. B. E. W. appeared in the Norfolk electrical division in June 1937 and received its charter on August 4, 1937. Organizational activity on behalf of the Amalgamated was resumed among the Norfolk transportation employees late in 1937.

[9] 49 Stat. 195.

B. INTERFERENCE, RESTRAINT, AND COERCION

According to his own admission, E. L. Bishop, the superintendent of the Norfolk transportation division, questioned about 15 of the respondent's employees in 1936 concerning their knowledge of organizational activity among them.

Three employees testified that William Edwards, an inspector in the Norfolk transportation division who performed supervisory functions, kept under surveillance several meetings of the T. W. U. attended by Norfolk transportation employees in June 1937 by standing across the street from the entrance of the meeting place and observing those who entered. Jesse Smith, an employee in the Norfolk transportation division, testified that
5685 Edwards warned him around this time that the employees would keep "messing around" with the C. I. O. until they lost their jobs. Raymond Hopkins, another Norfolk transportation employee, testified that Edwards made a similar statement to him. Edwards denied that he had engaged in surveillance or had made the statements attributed to him by Smith and Hopkins. On the entire record, however, we find that Edwards engaged in the actions attributed to him.[10]

The respondent contended that on several occasions in May 1937 Holtzclaw and other executives warned its supervisory employees not to interfere with the employees' efforts to form or join labor organizations and that any violation of such instructions cannot be charged to the respondent. We are of the opinion, however, that under the doctrine of respondeat superior the respondent must assume responsibility for the action of Edwards,[11] as well as for the interrogation earlier engaged in by Bishop.

We find that by the foregoing acts of Bishop and Edwards the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

---

[10] The respondent also used, until his death in 1937, the services of one Walters, an employee of the Railway and Audit Inspection Company, who prior to the effective date of the Act admittedly furnished a report on the labor activity of the employees to the respondent.

[11] See National Labor Relations Board v. A. S. Abell Company, 97 F. (2d) 951 (C. C. A. 4), mod'g and aff'g Matter of The A. S. Abell Company, a corporation, and International Printing and Pressmen's Union, Baltimore Branch, Baltimore Web Pressmen's Union, No. 31, 5 N. L. R. B. 644; Swift & Company v. National Labor Relations Board, 106 F. (2d) 87 (C. C. A. 10), mod'g and aff'g Matter of Swift & Company, a corporation, and Amalgamated Meatcutters and Butcher Workmen of North America, Local No. 641, and United Packinghouse Workers Local Industrial Union No. 300, 7 N. L. R. B. 269; and International Association of Machinists v. National Labor Relations Board, decided Nov. 20, 1939 (C. C. A. D. C.), aff'g Matter of The Serrick Corporation and International Union, United Automobile Workers of America, Local No. 459, 8 N. L. R. B. 621.

C. FURTHER INTERFERENCE, RESTRAINT, AND COERCION; DOMINATION OF THE I. O. E.

1. The April 26 Bulletin

On April 26, 1937, two weeks after the Supreme Court of the United States had upheld the constitutionality of the Act,[12] the respondent posted the following bulletin throughout its operations:

"*To Employees of the Company:*

"As a result of recent national labor organization activities and the interpretation of the Wagner Labor Act by the Supreme Court, employees of companies such as ours may be approached in the near future by representatives of one or more such labor organizations to solicit their membership. Such campaigns are now being pressed in various industries and in different
5686 parts of the country and strikes and unrest have developed in many localities. For the last fifteen years this Company and its employees have enjoyed a happy relationship of mutual confidence and understanding with each other, and during this period there has not been any labor organization among our employees in any department, so far as the management is aware. Under these circumstances, we feel that our employees are entitled to know certain facts and have a statement as to the Company's attitude with reference to this matter.

"The Company recognizes the right of every employee to join any union that he may wish to join, and such membership will not affect his position with the Company. On the other hand, we feel that it should be made equally clear to each employee that it is not at all necessary for him to join any labor organization despite anything he may be told to the contrary. Certainly, there is no law which requires or is intended to compel you to pay dues to, or to join any organization.

"This Company has always dealt with its employees in full recognition of the right of every individual employee, or group of employees, to deal directly with the Company with respect to matters affecting their interests. If any of you, individually or as a group, at any time, have any matter which you wish to discuss with us, any officer or department head will be glad, as they always have been, to meet with you and discuss them frankly and

[12] National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, rev'g 83 F. (2d) 998 (C. C. A. 5), and aff'g Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel & Tin Workers of North America, Beaver Valley Lodge No. 200, 1 N. L. R. B. 503, and companion cases.

fully. It is our earnest desire to straighten out in a friendly manner, as we have done in the past, whatever questions you may have in mind. It is reasonable to believe that our interests are mutual and can best be promoted through confidence and cooperation.

(Signed) J. G. HOLTZCLAW,
President."

The respondent's officials explain the posting of this bulletin as follows: They feared that newspaper publicity concerning labor activity in the vicinity of the respondent's operations and throughout the United States might have created the impression among the respondent's employees that they had to join a union, and they desired to dispel any such impression. It appears, however, that the bulletin was posted, not in response to any inquiry addressed to the respondent by its employees, but on the initiative of the respondent alone.

On its face the bulletin reveals a marked bias against what it calls "national" labor organizations. It warns that the employees "may be approached" by representatives of such "national" organizations, implies that "strikes and unrest" are caused by the campaigns of such organizations, and stresses the "happy relationship of mutual confidence and understanding" which characterized the 15 years since its defeat of the Amalgamated in 1922. After brief lip-service to the rights guaranteed by the Act, it emphasizes the negative "right" of its employees to refrain from the exercise of those rights.

We interpret the bulletin as an appeal to the employees to bargain with the respondent directly, without the intervention of any "outside" union. We find that by posting the bulletin the respondent interfered with, restrained, and coerced its
5687 employees in the exercise of the rights guaranteed in Section 7 of the Act.[13]

2. The May 24 Meeting

In the ensuing few weeks several groups of the respondent's employees responded to the bulletin in April 26 by submitting demands for increased wages and improved working conditions.[14] The respondent decided that before acting on these demands it would have a high-ranking official address representatives of all

[13] See Matter of Goshen Rubber and Manufacturing Company and United Rubber Workers of America, Local #124, 11 N. L. R. B. 1346, petition for enf't filed September 26, 1939 (C. C. A. 7); and Matter of The Midland Steel Products Company and United Automobile Workers of America, 11 N. L. R. B. 1214, petition to review filed May 26, 1939 (C. C. A. 6).

[14] At oral argument before the Board, counsel for the respondent asserted that the demands were in response to the bulletin.

the employees. Employees throughout the system were accordingly instructed by their supervisors to select representatives to attend meetings at which a respondent's official would speak. The employees complied. On the evening of May 24, two meetings of the elected delegates took place, one at Richmond and the other at Norfolk. At Richmond, Holtzclaw, and at Norfolk, R. J. Throckmorton, vice president of the respondent's Norfolk operations, delivered the following address:

"A substantial number of its employees representing various departments and various occupations have approached the Company with the request that the Company consider with them the matter of their working conditions and wages. In other words, they have requested collective bargaining. The Company's position with respect to this was recently stated in a posted bulletin.

"In a Company such as ours, if an individual operator, for example, should ask for himself better working conditions or wages, this Company could not comply with his request without also making the same concessions to other similar operators. In such a case the operator who appealed individually would, as a practical matter, be bargaining collectively for all of his group, which is not the logical procedure.

"This Company is willing to consider the requests mentioned above but feels that in fairness to all of its employees and to itself, it should at the same time consider other groups who have not yet come to it. If the approaching negotiations are to be intelligent and fair to all properly concerned, they should be conducted in an orderly way and all interested groups should be represented in these discussions by representatives of their own choosing as provided in the Wagner National Labor Relations Act, which provides as follows:

"'SECTION 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.'

"The Wagner Act applies only to employees whose work is in or directly affects interstate commerce and to companies engaged in interstate commerce. Counsel for this Company advise us that in their opinion the provisions of the Act do not apply to
5688 local transportation employees, to gas employees in Norfolk, or to certain strictly local employees of the light and power department. In spite of this, the Company wants to make it perfectly clear that its policy is one of willingness to bargain with its employees in any manner satisfactory to the majority of its

employees and that no employee will be discriminated against because of any labor affiliations he desires to make.

"The petitions and representations already received indicate a desire on the part of these employees at least to do their own bargaining, and we are taking this means of letting you know our willingness to proceed with such bargaining in an orderly manner. In order to progress, it would seem that the first step necessary to be taken by you is the formation of a bargaining agency and the selection of authorized representatives to conduct this bargaining in such an orderly manner.

"The Wagner Labor Act prohibits a company from 'dominating or interfering with the formation or administration of any labor organization or contributing financial or other support to it.'

"In view of your requests to bargain directly with the Company and in view of your right to self-organization as provided in the law, it will facilitate negotiations if you will proceed to set up your organization, select your own officers and supervisors, adopt your own bylaws and rules, and select your representatives to meet with the company officials whenever you desire."

Holtzclaw added, at the conclusion of the quoted speech, that any wage increase granted by the respondent would become effective as of June 1, 1937; Throckmorton did not. As to all other material incidents the two meetings were substantially identical. Employees asking whether they had to join a labor organization and what kind of organization they should form were told they need join none and were refused advice as to the type of organization they should adopt. At the close of the respondent's direct participation in the meetings the delegates were told they might, if they wished, remain and discuss the matter further. At both meetings, a substantial number of the delegates remained, decided to report the speech to their fellow employees, and agreed to meet for further discussion on June 1.

By the speech delivered at the May 24 meetings the respondent gave the initial impetus to the formation of a system-wide labor organization. The speech referred to the bulletin posted April 26, thereby reemphasizing the respondent's distaste for "outside" organizations. It expressed the respondent's belief that most of its operations were exempt from the application of the Act, thus implying that self-organization of the employees engaged in such operations was in any event subject to the respondent's sufferance. It nevertheless urged the necessity of organization. Finally, after it had already quoted the provision of the Act forbidding employer-domination of labor organizations, and although there was then in existence no labor organization involving the respondent's participation with which contrast could have been intended, it sug-

gested that the employees select their "own" officers and adopt their "own" bylaws and rules.

But the mechanics of the meetings of May 24, no less than the speech itself, assured the formation of an "inside" union. The delegates present had been selected, at the respondent's command, to attend and to listen. None had been empowered by their constituents to act. After imbuing them with its desire that the employees organize, the respondent "permitted" them to remain and discuss the matter. The respondent's actions converted the delegates, isolated from their constituents and under the immediate influence of the officials, into virtual representatives of the employer among the employees who had elected them. The
5689 respondent argues that the refusal of its officials to indicate what kind of an organization the employees should form is proof of its impartiality in that respect. In its context, however, the refusal convinces us only that the respondent did not care what kind of *unaffiliated* organization the employees might adopt. We find that at the May 24 meetings the respondent urged its employees to organize and to do so independently of "outside" assistance, and that it thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Organization of the I. O. E.

At the time of the events under discussion there had been little self-organization among the respondent's employees.[15] The technique employed by the respondent for stimulating the organization of an "inside" union was highly successful.[16] Within the week ensuing the May 24 gatherings, meetings of employees were held in all the departments, frequently with the cooperation of supervisory employees. The speech was there reported to the employees who immediately voted to form an independent organization and elected representatives for that purpose. The elected representatives, constituting themselves steering committees at Richmond and at Norfolk, met upon the respondent's premises in those cities on June 1.[17] On June 3, representatives from Richmond and Norfolk attended a meeting at Petersburg, where a committee of three

[15] See section III, A, supra.

[16] At oral argument before the Board, counsel for the respondent in effect admitted that the speech of May 24 gave impetus to the formation of the I. O. E.

[17] Unless otherwise stated, all the meetings of the Richmond and Norfolk steering committees prior to June 15, 1937, were held on the premises of the respondent. During the preliminary stages the members of the steering committees used the telephone facilities and the bulletin boards of the respondent freely. In this connection the attitude of the respondent towards the activities of outside organizations should be noted. When an A. F. of L. organizer sought to solicit the respondent's employees in 1933, he was informed by Holtzclaw that he could not engage in any activity on the respondent's premises, and in March 1937 Holtzclaw told L. E. Davis to instruct Parker that he could not organize on the respondent's premises.

was appointed to employ a lawyer for the purpose of drawing up a constitution and bylaws for an independent system-wide organization. On June 5, Eugene Underwood, a member of the Richmond steering committee, engaged W. Earl White for this purpose.

Thereafter further meetings were held by the steering committees in Richmond on June 9 and in Norfolk on June 7 and 11 for the purpose of discussing and suggesting changes in the constitution and bylaws drafted by White. On June 15 the Norfolk and Richmond representatives met in the American Legion Hall in Richmond and adopted the constitution and bylaws. The I. O. E. thereupon came into existence. The constitution of the I. O. E. provided for 4 divisions and 27 voting sections among the respondent's employees. In the Norfolk division of the respondent, employees in 14 voting sections elected representatives to the 4 divisional committees, such representatives constituting Norfolk inter-departmental committee. The employees in the 13 voting sections of the Richmond division of the respondent selected representatives to 3 of the 4 divisional committees, who constituted the Richmond inter-departmental committee. The divisional and inter-departmental committees elected from their own number representatives to the general committee, the supreme body of the I. O. E.

On June 17 application cards for the I. O. E. were distributed throughout the entire system, many of which were signed on the respondent's premises during working hours. Within a
5690 period of approximately 3 weeks from the time the I. O. E. cards were first circulated about 2,000 signatures were obtained.

On June 22 a general meeting of the Norfolk employees for the purpose of explaining the constitution and bylaws of the I. O. E. took place. On July 2 elections were held to nominate representatives to the various committees of the I. O. E., and on July 12 the elections of such officials took place. On July 13 the Norfolk steering committee announced the representatives of the voting sections of the I. O. E. who had been elected and then dissolved. The voting section representatives then voted for officers to the inter-departmental committees and a delegate-at-large to the general committee. A meeting was held in Richmond on July 16 at which the Richmond steering committee was dissolved and the officers of the inter-departmental committee and representative to the general committee were elected. Of the 29 representatives elected to the inter-departmental committees of the I. O. E. approximately 20 had been present at a reading of the May 24 address.

On July 17 and 18, 1937, the various inter-departmental and general committeemen of the I. O. E. drafted a contract to be submitted to the respondent. On July 19 the I. O. E. notified the

respondent that it represented more than 50 percent of the respondent's employees, submitted a proposed contract, and requested that a date be set for its discussion.

Negotiations on the contract between the representatives of the I. O. E. and the officials of the respondent began on July 30. By midnight of July 31, the officials of the respondent and the I. O. E. had agreed on all of the provisions of the contract, with the exception of the incorporation of a closed-shop provision and the amount of the wage increases. Thereupon, the respondent agreed to grant the I. O. E. a closed-shop provision [18] and the I. O. E. accepted a smaller increase in wages than it had originally demanded. On the following day the parties drafted the wording of the contract and, after its ratification by the inter-departmental committees of the I. O. E., signed it on August 5, 1937.[19]

On August 20, 1937, the respondent paid the I. O. E. $3,784.50 as dues, pursuant to the check-off provision in the contract, although it had not yet deducted that entire amount from the wages of the employees. On October 28 the respondent posted a notice throughout its entire system, stating that the 90-day period provided for in the contract would expire on November 4, 1937, and that it was necessary for all of its employees to join the I. O. E. by that date.

4. Conclusions Regarding the I. O. E.

We are of the opinion and we find that the I. O. E. owes its existence and its form to activities of the respondent. The 5691 May 24 meetings and the address there delivered by Hoitzclaw and Throckmorton provided the initial impetus for subsequent organization. Within a week meetings were held in practically all of the departments of the respondent's system, at which the employees, pursuant to the suggestions contained in the addresses of May 24, voted to form an independent organization and elected representatives for that purpose. Thereafter, meetings of the steering committees were held on the premises of the respondent for the purpose of forming an independent system-wide labor organization. Bulletin boards of the respondent were used for the posting of notices of meetings, and telephone connec-

[18] This provision stated in effect that all employees of the respondent must join the I. O. E. within a 90 day period from the signing of the contract.

[19] The contract, effective as of June 1, 1937, provided for a wage increase to the employees, overtime payments, a check-off of dues, a board of arbitration to adjust grievances, and permitted the I. O. E. to erect bulletin boards on the respondent's property. The contract was to last for 1 year and thereafter from year to year, unless terminated by either party by 30 days' notice before the end of any annual period. On April 28, 1938, a conference was held by representatives of the I. O. E. and the respondent concerning prospective changes in the contract. A copy of the complaint in the instant proceedings was served on the parties on May 9, 1938. It was thereafter agreed that if neither party gave notice of intention to terminate the contract by May 26, 1938, the contract would continue unchanged. The contract was automatically renewed for a second year when neither party gave such notice.

tions of the respondent were used by the representatives to communicate with each other. Within approximately three weeks after the addresses, the constitution and bylaws of the I. O. E. had been adopted and the organization set up. Within a period of approximately three weeks from the time the I. O. E. cards were first circulated in the plant of the respondent a majority of the employees had signed as a result of the widespread solicitation on the premises of the respondent throughout the entire system.

The respondent argues that it had no knowledge that the meetings of the committees were being held on its premises, and that its executives did not give their consent to the use of its buildings and telephone facilities for this purpose. However, because of the large number of meetings, accounts of which appeared in the local newspapers, we are of the opinion that the respondent was aware that they were taking place and gave tacit, if not express, consent to the use of its premises.

The respondent further argues that only the preliminary meetings of the committees were held on the respondent's premises, that the I. O. E. did not come into existence until June 15, 1937, when its constitution and bylaws were adopted, and that meetings were not held on the premises of the respondent subsequent to that date. An examination of the development of the I. O. E. shows, however, that there was a continuity in the personnel of that organization, beginning with the selection of the representatives to attend the May 24 meetings and continuing to the elections of the officials of the I. O. E. The steering committees performed the basic work of drafting and approving the constitution and bylaws of the organization and conducting the elections. It was not until the officers of the I. O. E. were installed that the steering committees were dissolved. Thereafter, at the meetings of the I. O. E. held on July 17 and 18 that organization ratified the acts and assumed all of the assets, debts, and obligations incurred by the steering committees.

The respondent also contends that the negotiations between the respondent and the I. O. E. concerning the terms of the contract were carried on at arm's length, and in support of this contention points to the increase won by the employees. It may be recalled, in this connection, that at the May 24 meeting in Richmond, Holtzclaw indicated that a wage increase might be granted. It may well be that the respondent intended to increase wages in any event. In the light of the entire record the outcome of the negotiations does not alter our conviction that the I. O. E. was employer-dominated.

We find that the respondent has dominated and interfered with the formation and administration of the I. O. E. and has contrib-

nted support to it; that it has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

D. THE DISCHARGES

Joseph Bolton was employed by the respondent in September 1926 as a bus operator in the Norfolk division. He was discharged on January 13, 1938. In his Intermediate Report the Trial Examiner found that the respondent's discharge of Bolton was not discriminatory and recommended that the complaint as to him be dismissed. We agree with the Trial Examiner's finding. The Amalgamated, which had filed the charges as to Bolton, filed no exceptions to the Intermediate Report. We shall accord-
5692 ingly dismiss the complaint insofar as it alleges that by discharging Bolton the respondent discriminated in regard to his hire and tenure of employment.

Everard M. Mann was employed by the respondent as a street car operator in Norfolk on July 29, 1936. On November 8, 1936, his wages were increased from 43 to 46 cents an hour. At a meeting of Norfolk transportation employees held on the respondent's premises on May 11, 1937, for the purpose of discussing proposed changes in their working conditions, Mann protested vigorously against the formation of an inside union, advocated that the employees affiliate with either the T. W. U. or the Amalgamated, and stated that he preferred the T. W. U., which he joined shortly after the meeting. Thereafter, he vigorously urged his fellow employees to organize a union having national affiliation.

On May 27, 1937, Mann, who had spoken to Bishop a few days previous with reference to obtaining a loan of $50 from the respondent to bring a sick sister to Virginia from Pennsylvania, walked into the dispatcher's office and asked the employees present, "Has anybody seen this guy Bishop?" Bishop, who was present in the office reading a newspaper, lowered it, and the dispatcher said, "Why, there is Mr. Bishop." Mann looked at Bishop but said nothing and walked out. On June 1, 1937, Bishop discharged Mann on the ground that the latter had been disrespectful to him.

Bishop stated at the hearing that by referring to him as "this guy Bishop" in his presence, Mann did not exhibit the respect necessary to maintain discipline among the employees, and that Mann's failure to apologize to him induced him to discharge Mann, after he had discussed the incident with Throckmorton. Bishop also stated that Mann had had a number of accidents, which, al-

though not the cause of his discharge, nevertheless militated against Bishop's overlooking this "offense." [20]

We are of the opinion that Mann was discharged because of his union activities and not because of the incident relied upon by Bishop. As stated above, Mann was one of the first employees to take a firm stand against the formation of an inside organization and to advocate the formation of an outside union. We believe that his discharge, about two weeks after the meeting, was intended as a warning to the other employees who might also desire the formation of an outside union. Moreover, it is clear that Mann did not intend any affront to Bishop when he inquired as to the whereabouts of "this guy Bishop," because the very question reveals that he was unaware of Bishop's presence. We believe that the respondent seized upon the incident as a pretext to get rid of Mann. Although Bishop stated that he had no knowledge of Mann's union activity, Warren Bishop, his son, was present throughout the May 11 meeting. Bishop denied that he had ever obtained any information regarding the labor activities of the employees from his son, or that he had discharged Mann for his union activity, but offered no explanation why Warren Bishop, who was not an employee of the respondent, was present at the meeting. In view of his admission that in 1936 he questioned about 15 employees concerning their union activity, we do not find his denials convincing.

We find that, by discharging Everard M. Mann, the respondent discriminated in regard to his hire and tenure of employment, thereby discouraging membership in the T. W. U., and in-
5693 terfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Mann desires reinstatement with the respondent. At the time of his discharge Mann was receiving $55 every 2 weeks. Since his discharge he has earned $195.

A. F. Staunton was hired in October 1936 as a first class lineman in the Norfolk Cove Street department. He was an active member in the I. B. E. W. subsequent to his joining it in June 1937. On November 4, 1937, William Crafton, superintendent of distribution in Norfolk, told Staunton he would have to join the I. O. E. or quit. Thereupon Staunton left the respondent's employ.

The respondent argues that it did not discharge Staunton, but that the latter quit. We have found, however, that the respondent dominated and interfered with the formation and administration

[20] An examination of the employment record of Mann, shows that all of such accidents were minor affairs and caused little expense to the respondent, with the exception of those which occurred on September 21 and 23, 1936. The first cost the respondent $211 and the other $65. Mann stated that the accident of September 21, 1936, occurred when an aged lady injured herself when alighting from the rear door of a one man street car. The accident of September 23, 1936, appears to be of a similar nature. Mann was not warned by Bishop when the accidents occurred.

of the I. O. E. The respondent's agreement with the I. O. E. was, accordingly, entered into with a labor organization assisted by unfair labor practices. The provision of the agreement requiring membership in the I. O. E. as a condition of employment is therefore outside the scope of the proviso in Section 8 (3) of the Act [21] and its application by the respondent constitutes discrimination in regard to hire and tenure of employment. By requiring Staunton to choose between joining the I. O. E. and quitting, the respondent imposed a discriminatory and illegal condition to his continued employment. Its action must be viewed as a discharge.

We find that on November 4, 1937, the respondent discharged A. F. Staunton because he refused to join the I. O. E., thereby discriminating in regard to hire and tenure of employment, encouraging membership in the I. O. E., discouraging membership in the I. B. E. W., and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The respondent also argues that after Staunton's employment with the respondent terminated he obtained substantially equivalent employment elsewhere. At the time of his discharge Staunton was receiving $75 every 2 weeks. Subsequent to leaving the respondent, Staunton obtained a job with a construction firm in Pennsylvania at a higher salary than that which he received from the respondent. At the hearing Staunton stated that he desired to be restored to his former position with the respondent. We are of the opinion that Staunton's desire to be reinstated at the respondent's plant should be given weight in determining whether he has obtained substantially equivalent employment. We find that he has not.[22]

5693½ Robert E. Elliott, Jr., was employed by the respondent as a motor coach operator for several months in 1930, 1931, and 1932, and continuously from May 18, 1934, until November 4, 1937. On the latter date the respondent discharged him because he refused to join the I. O. E. Elliott played a prominent

[21] See Hamilton Brown Shoe Co. v. *National Labor Relations Board*, 104 F. (2d) 49 (C. C. A. 8), mod'g and aff'g Matter of Hamilton Brown Shoe Co., a corporation and Local No. 125, United Shoe Workers of America, affiliated with the Committee for Industrial Organization, 9 N. L. R. B. 1073; National Labor Relations Board v. National Motor Bearing Co. et al., 105 F. (2d) 652, mod'g in part, set'g aside in part, enforcing in part, Matter of National Motor Bearing Company and International Union, United Automobile Workers of America, Local No. 76, 5 N. L. R. B. 809; International Association of Machinists v. National Labor Relations Board, decided November 20, 1939 (App. D. C.) aff'g Matter of The Serrick Corporation and International Union, United Automobile Workers of America, Local No. 459, 8 N. L. R. B. 62.

[22] See Matter of Pulaski Veneer Corporation and United Brotherhood of Carpenters and Joiners of America, Local Union #1862, 10 N. L. R. B., No. 11; Matter fo L. C. Smith and Corona Typewriters, Inc. and International Metal Polishers, Buffers and Platers Union of North America, 11 N. L. R. B. No. 123; Matter of Eagle-Picher Mining & Smelting Co. a corporation, and Eagle-Picher Lead Company, a corporation and International Union of Mine, Mill and Smelter Workers, Locals Nos. 15, 17, 107, 108, and 111, 16 N. L. R. B., No. 77.

part in the organizational activities of the respondent's Norfolk transportation employees during May and June 1937. Largely through his efforts those employees remained apart from the I. O. E. until late in June. In that month, when the employees joined the I. O. E., Elliott became a member of the T. W. U. and its first president. About the middle of July 1937 he joined the Amalgamated. On November 1, 1937, Elliott was involved in an accident in which he sustained injuries. He remained away from work until after November 4 on which day the respondent discharged him.

Although the respondent does not deny that it discharged Elliott because of his refusal to join the I. O. E., it argues that it would have discharged him in any event because of the accident of November 1, which resulted in the loss of $75 in money and passes. Officials of the respondent testified that they had made an investigation of the accident, but were unable to locate any of the persons mentioned in the report, and that it was unusual for a party not to seek remuneration from the respondent in an accident of this nature.

The record reveals, however, that Elliott had been awarded a prize for being the most careful and efficient operator in 1936, and that although he had been in an accident on April 12, 1937, which resulted in the loss of approximately $125 in money and passes, the respondent did not withhold any of his money or threaten him with any disciplinary action on that occasion. Elliott's employment card states as the reason for the discharge his refusal to join the I. O. E., and Raymond Carroll, the manager of the respondent's Norfolk transportation division, admitted on cross-examination that the accident of November 1 had nothing to do with Elliott's discharge.

We are of the opinion that the respondent's contention is an afterthought and that it would not have discharged Elliott had he joined the I. O. E. For the reasons stated in the discussion of the case of Staunton, above, the respondent's action in discharging Elliott constituted discrimination in regard to his hire and tenure of employment.

We find that by discharging Robert E. Elliott, Jr., for refusing to join the I. O. E. the respondent discriminated in regard to his hire and tenure of employment, thereby encouraging membership in the I. O. E., discouraging membership in the T. W. U. and the Amalgamated, and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Elliott desires to be reinstated by the respondent. At the time of his dismissal he was receiving 60 cents an hour from the re-

spondent. Subsequent to his discharge he worked as a reporter with the Norfolk "Labor Journal" for several weeks, and then became an organizer for the Amalgamated, beginning January 1, 1938, at a slightly higher salary than that which he received from the respondent. Since this work is entirely different from the work he was performing for the respondent and is only temporary in nature, it is evident and we find that he has not obtained substantially equivalent employment.

T. N. Harrell, Jr., and J. L. Judge were employed by the respondent in April 1936 as temporary linemen's helpers in the Cove Street division at Norfolk. Early in 1937 both men received a 5 cents per hour wage increase for good work, and both later shared in the general wage increase resulting from the respondent's contract with the I. O. E. which raised their wages to 56½ cents per hour. On November 1, 1937, Judge and Harrell were transferred to the respondent's roll of permanent employees and Judge received another raise in pay of 4½ cents per hour. The respondent laid off both men on March 31, 1938.

5694 The I. B. E. W. began to organize the respondent's employees in June 1937 and Judge and Harrell joined the organization on June 25, 1937. Their activities as advocates of employee self organization were such as to call them to the attention of the management. Thus, Harrell, shortly after a meeting of employees held in the Cove Street plant in May 1937, told Theodore May, the general foreman of the electrical distribution department at Norfolk, that he disapproved of the formation of an inside union (for which purpose the meeting had been called) and intended to join an outside union. May replied that he saw no reason why a man should join an outside union and that he had never seen any good resulting from such an organization. Harrell thereafter became a charter member of the I. B. E. W., solicited membership in that organization, and disparaged the I. O. E. among his fellows. Judge, too, was conspicuous in union affairs. In August 1937 he was elected financial secretary and treasurer of the I. B. E. W. On August 16, 1937, Crafton ordered Staunton and Judge to remove an I. B. E. W. notice, signed by them, from the respondent's bulletin board.[23] In March 1938, just prior to their lay-offs, Judge and Harrell were leaders in an intensive membership drive conducted by the I. B. E. W.

The respondent introduced evidence showing that the Cove Street division had been engaged in an extensive rural electrifica-

[23] On this occasion Crafton told them that no notices of the I. B. E. W. could be posted until the I. B. E. W. secured a contract with the respondent. Since the agreement of August 5, 1937, permitted the I. O. E. to erect its own bulletin boards this act of Crafton was a denial to the I. B. E. W. of a privilege theretofore granted to the I. O. E.

tion program in Virginia and North Carolina during 1936 and 1937; that around the beginning of March 1938 this work had been practically completed; that it was therefore necessary to reduce the number of employees; and that on March 31, 1938, the respondent laid off in the Cove Street division 13 employees, among whom were Judge and Harrell. W. V. Holik, superintendent of light and power in Norfolk and Portsmouth, Crafton, and May, the supervisory officials of the Cove Street division, testified that in determining the employees who should be laid off they took into consideration their experience and ability, their financial status and dependents, and their ability to get along with the other employees.

The respondent contends that Harrell was laid off because he was surly and ill-tempered, that he could not get along with his fellow employees, and that he had not progressed as rapidly as the workers whom it retained. However, the record reveals that Harrell's unpopularity with his fellow employees was caused principally by his constant efforts to disparage and discredit the I. O. E. and to promote the I. B. E. W.; that in the past when friction had arisen among the employees and foreman the respondent had attempted to solve such difficulty by transferring the employees to different crews; that the supervisory officials who laid off Harrell never made any investigation of the incidents in which Harrell was involved to determine the extent to which he was responsible for them; that Harrell's advancement with the respondent was impeded by an injury which he suffered while working for the respondent; that several foremen for whom Harrell worked testified that he carried out their instructions without causing any trouble; that he was a married man with one dependent; and that Harrell had more seniority than five of the eight third class linemen whom the respondent kept.

Upon the entire record, we are unable to accept the respondent's contention concerning the lay-off of Harrell and are of the opinion that the respondent terminated his employment because of his membership and activity on behalf of the I. B. E. W.

We find that the respondent by laying off T. N. Harrell, Jr., discriminated in regard to his hire and tenure of employment, thereby discouraging membership in the I. B. E. W., and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

5695 Harrell desires reinstatement with the respondent. At the time of his discharge he was receiving 56½ cents an hour. He has had no earnings since his lay-off.

The respondent argues that Judge was laid off because he was the junior second-class lineman. Holik and Crafton testified that

in October 1937, after Judge, Ambrose Fowler, his foreman, and William Faust, an official of the I. O. E., asked Holik to give Judge an increase in wages, Holik instructed Crafton to raise Judge's wages by 4½ cents an hour; that Crafton made out a pay-roll slip providing for the increase, which was sent to the respondent's Richmond office; that the slip was returned to Norfolk with a notation that since all the third-class linemen were being paid 56½ cents an hour Judge would have to be made a second-class lineman in order to receive the increase; that Holik then corrected the slip so as to make Judge a second class lineman; and that the changed status and increase became effective as of November 1, 1937. Holik and Crafton also asserted that the second-class linemen whom the respondent retained had been with it for a period of three years or longer than Judge.

The record reveals that Judge, the only second-class lineman in the Norfolk electrical division to be laid off, was a competent, conscientious, and satisfactory employee whose advancement had been very rapid; that he was a married man with three dependents; and that he was the last employee to become a second-class lineman.

Although the respondent had not applied a seniority rule in the past, its application of such a rule in the case of Judge does not, in itself, persuade us that it discriminated against him because of his I. B. E. W. activities. Judge was given a salary increase and a promotion some time after he became an officer of the I. B. E. W.

We find that the respondent, by laying off J. L. Judge, did not discriminate in regard to his hire and tenure of employment and shall dismiss the allegation of the complaint that it did so.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, commerce, transporation, and communication among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the respondent has engaged in unfair labor practices, we shall order that it cease and desist therefrom and that it take certain affirmative action which will effectuate the policies of the Act.

We have found that the respondent has dominated and interfered with the formation and administration of the I. O. E. and has contributed support to it. In order to effectuate the policies of the Act and free the employees of the respondent from such domination and interference, we shall order the respondent to withdraw all recognition from the I. O. E. as the representative of any of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of em-
5696 ployment, and completely to disestablish it as such representative.[24] Since the contract between the respondent and the I. O. E. embodying recognition of the I. O. E. as such representative was entered into with an organization brought into existence by unfair labor practices of the respondent, we shall order the respondent to cease and desist from giving effect to the contract heretofore described or to any extension, renewal, modification, or supplement thereof, or any successor contract with the I. O. E. which may now be in force.[25] The contract of August 5, 1937, provided for a check-off and the respondent has deducted from the wages of those employees who were members of the I. O. E. dues for the I. O. E. We shall order the respondent to reimburse the employees who were members of the I. O. E. for the dues and assessments, if any, which the respondent has deducted from their wages on behalf of the I. O. E.[26]

Since we have found that the respondent's discharges of Everard M. Mann, Robert E. Elliott, Jr., and A. F. Staunton, and lay-off of T. N. Harrell, Jr., were unfair labor practices, we shall direct the respondent to reinstate each of them to his former position, without prejudice to his seniority and other rights and privileges. We shall further order the respondent to make whole Mann and Harrell for any loss of pay they may have suffered by reason of the respondent's discrimination against them by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less his net earn-

[24] See Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, 236 (1938); National Labor Relations Board v. Pennsylvania Greyhound Lines, 303 U. S. 261 (1938); National Labor Relations Board v. Pacific Greyhound, 303 U. S. 277 (1938); National Labor Relations Board v. Newport News Shipbuilding & Dry Dock Company, — U. S. —, decided December 4, 1939.

[25] National Labor Relations Board v. Stackpole Carbon Co., 105 F. (2d) 167 (C. C. A. 3) mod'g and enf'g Matter of Stackpole Carbon Company and United Electrical & Radio Workers of America, Local No. 502, 6 N. L. R. B. 171, cert. den. November 6, 1939. See also cases cited in footnote 21, supra.

[26] See Matter of The Heller Brothers Company of Newcomerstown and International Brotherhood of Blacksmiths, Drop Forgers and Helpers, 7 N. L. R. B. 646; Matter of Lone Star Bag and Bagging Company and Textile Workers Organizing Committee, 8 N. L. R. B. 244; Matter of The Western Union Telegraph Company, a corporation and American Communications Association, 17 N. L. R. B., No. 5, petition for review filed November 2, 1939 (C. C. A. 2).

ings[27] during said period. Although finding that the discharges of Elliott and Staunton were violations of Section 8 (1) and (3) of the Act, the Trial Examiner in his Intermediate Report made no recommendation for their reinstatement on the ground that they had obtained regular and substantially equivalent employment subsequent to their discharges. As stated above, we do not agree with the Trial Examiner's conclusion that the two men secured regular and substantially equivalent employment. Even if we shared that view, however, we should order, and we shall
5697 order, that Elliott and Staunton be reinstated by the respondent with back pay.[28] In view of the absence of such a recommendation by the Trial Examiner, however, the respondent could not have been expected to offer Elliott and Staunton reinstatement. We shall accordingly direct that the period from the date of the Intermediate Report to the date of this Order be excluded in the computation of the back pay due them.[29]

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following:

Conclusions of Law

1. Transport Workers Union of America, Amalgamated Association of Street, Electrical Railway, and Motor Coach Employees of America, International Brotherhood of Electrical Workers, and Independent Organization of Employees of Virginia Electric and Power Company, are labor organizations within the meaning of Section 2 (5) of the Act.

---

[27] By "net earnings" is meant earnings less expenses such as transportation, room and board incurred by an employee in connection with obtaining work and working elsewhere than for the respondent which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union Local 2590, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects are not considered as earnings but as provided below in the Order shall be deducted from the sum due the employee and the amounts all be paid over to the appropriate fiscal agent of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work relief projects.

[28] See Matter of Eagle-Picher Mining & Smelting Company, a Corporation, and Eagle Picher Lead Company, a Corporation, and International Union of Mine, Mill & Smelter Workers, Locals Nos. 15, 17, 107, 108, and 111, 16 N. L. R. B. No. 71, wherein the Board stated: "The respondents contend that only 'employees' within the meaning of Section 2 (3) fall within the jurisdiction of the Board for purposes of remedial action, and that those who have obtained such regular and substantially equivalent employment are not such employees. While Section 10 (c) provides for reinstatement of 'employees' we do not believe that those claimants who have obtained regular and substantially equivalent employment thereby became remedyless either for the purposes of back pay or for purposes of future employment by the respondent."

[29] Cf. Matter of E. R. Haffelfinger, Inc. and United Wall Paper Crafts of North America, Local No. 6, 1 N. L. R. B. 760; Matter of Kentucky Firebrick Company and United Brick and Clay Workers of America, Local Union No. 510, 3 N. L. R. B. 475, enf'd National Labor Relations Board v. Kentucky Firebrick Co., 99 F. (2d) (C. C. A. 6).

2. By dominating and interfering with the formation and administration of Independent Organization of Employees of Virginia Electric and Power Company and contributing support to it, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Everard M. Mann, Robert E. Elliott, Jr., A. F. Staunton, and T. N. Harrell, Jr., and thereby discouraging membership in Transport Workers Union of America, Amalgamated Association of Street, Electrical Railway, and Motor Coach Employees of America, and International Brotherhood of Electrical Workers, and encouraging membership in Independent Organization of Employees of Virginia Electric and Power Company, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

6. By discharging Joseph Bolton and laying off J. L. Judge, the respondent has not engaged in unfair labor practices, within the meaning of Section 8 (3) of the Act.

On the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Virginia Electric and Power Company, Richmond, Virginia, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner dominating or interfering with the administration of Independent Organization of Employees of Virginia Electric and Power Company, or the formation or administration of any other labor organization of its employees, or contributing support to Independent Organization of Employees of Virginia Electric and Power Company, or any other labor organization of its employees:

(b) In any manner giving effect to its contract heretofore described with Independent Organization of Employees of Virginia Electric and Power Company or to any extension, renewal, modi-

fication, or supplement thereof, or to any successor contract with Independent Organization of Employees of Virginia Electric and Power Company which may now be in force;

(c) Discouraging membership in Transport Workers Union of America, Amalgamated Association of Street, Electrical Railway, and Motor Coach Employees of America, International Brotherhood of Electrical Workers, or any other labor organization of its employees, or encouraging membership in Independent Organizatin of Employees of Virginia Electric and Power Company, or any other labor organization of its employees, by discharging, laying off, or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Independent Organization of Employees of Virginia Electric and Power Company as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of employment and completely disestablish Independent Organization of Employees of Virginia Electric and Power Company as such representative;

(b) Offer to Everard M. Mann, Robert E. Elliott, Jr., A. F. Staunton, and T. N. Harrell, Jr., immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

(c) Make whole Everard M. Mann and T. N. Harrell, Jr., and each of them for any loss of pay he may have suffered by reason of the respondent's discrimination against him by payment to each of them of a sum of money equal to that which he normally would have earned as wages from the date of his discharge or lay-off to the date of the offer of reinstatement, less his net earnings during said period; deducting from the amount otherwise due him monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects; and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other govern-

ment or governments which supplied the funds for said work-relief projects;

5699 (d) Make whole Robert E. Elliott, Jr., and A. F. Staunton, and each of them for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to each of them of a sum of money equal to that which he normally would have earned from the date of his discharge to the date of the Intermediate Report and from the date of this Order to the date of the respondent's offer of reinstatement, less his net earnings during said periods; deducting, however, from the amount otherwise due him monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects; and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(e) Reimburse each of its employees who were members of Independent Organization of Employees of Virginia Electric and Power Company for all the dues and assessments, if any, which it has deducted from their wages on behalf of Independent Organization of Employees of Virginia Electric and Power Company;

(f) Post immediately in conspicuous places throughout the respondent's system and maintain for a period of at least sixty (60) consecutive days notices to its employees stating that the respondent will cease and desist as provided in paragraph 1, that it will take the affirmative action set forth in paragraphs 2 (a), (b), (c), (d), and (e) of this Order, that the respondent's employees are free to become or remain members of Transport Workers Union of America, Amalgamated Association of Street, Electrical Railway, and Motor Coach Employees of America, or International Brotherhood of Electrical Workers, and that the respondent will not discriminate against any employee because of membership or activity in such organizations;

(g) Notify the Regional Director for the Fifth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

It is further ordered that the allegations of the complaint with respect to Joseph Bolton and J. L. Judge be, and they hereby are, dismissed.

Signed at Washington, D. C., this 27th day of February 1940.

[SEAL] J. WARREN MADDEN,
Chairman.

EDWIN S. SMITH,
Member,
National Labor Relations Board.

5701 In United States Circuit Court of Appeals for the Fourth Circuit

No. 4616

VIRGINIA ELECTRIC AND POWER COMPANY, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition for Review of Order of the National Labor Relations Board

Petition for review

Filed March 9, 1940

To the Honorable Judges of the United States Circuit Court of Appeals for the Fourth Circuit:

Virginia Electric and Power Company, Petitioner, being aggrieved by a Final Order, hereinafter referred to, of the National Labor Relations Board, pursuant to authority conferred upon Petitioner by Section 10 (f) of the National Labor Relations Act of July 5, 1935 [49 Stat. 449, 29 U. S. C. A., Section 160 (f)], respectfully prays this Honorable Court to review and set aside the Final Order entered and issued on February 27, 1940, by said National Labor Relations Board in a consolidated proceeding before it entitled and designated upon the records of said Board as "In the Matter of Virginia Electric and Power Company and Transport Workers Union of America," Case No. C-914; "In the Matter of Virginia Electric and Power Company and Amalgamated Association of Street, Electrical Railway and Motor
5702 Coach Employees of America, an unincorporated association," Case No. C-915; and "In the Matter of Virginia Electric and Power Company and International Brotherhood of Electrical Workers," Case No. C-916.

In support of this its petition, your Petitioner respectfully shows unto this Honorable Court the following:

I

The Respondent, National Labor Relations Board (hereinafter sometimes called the "Board"), is a quasijudicial tribunal created and existing under the Act of Congress known as the "National Labor Relations Act," approved July 5, 1935, c. 372, 49 Stat. 449, et seq.; 29 U. S. C. A. Section 151, et seq. (hereinafter designated the "Act").

II

Petitioner is a corporation organized and existing under and by virtue of the laws of the Commonwealth of Virginia and at the times hereinafter mentioned it was, and it is now, engaged in three wholly different and dissimilar enterprises for the conduct of which its property, and the personnel of its management and employees (with exceptions hereinafter noted), are separated into and allocated to three distinct departments, namely:

(a) The Transportation Department is engaged in the maintenance and operation of street railways and bus lines in Richmond and Norfolk, bus lines in Portsmouth and Petersburg, all in the Commonwealth of Virginia. Those transportation facilities do not cross any state line or connect with any transportation facilities which do cross any State lines and are not operated in connection with any transportation facilities which do
5703 cross any State line. No mail, express, or freight is carried. No through tickets or other joint fares, involving services over the Petitioner's transportation facilities, are sold or issued by anyone. None of the bus lines carry interstate passengers or is licensed to do so under the Federal Motor Carrier Act or any other statute. Street cars and buses are purchased from outside of Virginia as operating needs may require. The bus division of the Transportation Department does not use any electric energy. All of the gasoline for such operations is purchased within Virginia from large quantities of gasoline held for general distribution in bulk storage terminals or distribution terminals located in Virginia and owned by companies entirely unrelated to Petitioner. The Transportation Department receives electric energy from the Electric Department, taking something less than 5% of the total output of the latter department, and is charged therefor on the basis of a pro rate of direct out of pocket cost, a procedure recognized and accepted by the Virginia Corporation Commission in its supervision over the Petitioner's operations and accounting. Complete abandonment of the entire street railway system would not occasion any retirement of or reduction in the facilities of the Electric Department, or any reduction of the production of power from the interconnections of the Electric Department, or any increase or decrease in the amount of power transmitted across the Virginia-North Carolina State line.

As of April 30, 1938, there were 1,259 employees in the Transportation Department. The entire supervisory and nonsupervisory personnel of the Transportation Department is separate and distinct from that of either of the other two departments with the single exception of the top executives and general office services.

All of the facilities of the Transportation Department are separate and distinct from those of either of the other
5704 two departments, except for a small amount of property used jointly to avoid duplication of facilities by the street railways with the Electric Department. The operation of buses is conducted without the use of any property jointly with either of the other two departments. The shops, garages, and car barns for the storing, overhauling, and repairing of street cars and buses are maintained in Virginia.

In public supervision and regulation the Transportation Department is treated separately by the appropriate State regulatory bodies in the determination of valuation, revenues, expenses, taxes, and depreciation.

The Petitioner denies that the Board has jurisdiction over the Transportation Department or the employees therein and over the labor relations between Petitioner and the employees in such department.

(b) The Gas Department is engaged in the production of manufactured gas in the City of Norfolk, Virginia, and the distribution thereof to consumers in Norfolk, South Norfolk, and Norfolk County, Virginia, exclusively. The facilities used in those operations do not cross any State line nor connect with any gas facilities which do cross any State line. Most of the consumers are residential consumers and most of the output is sold to residential consumers. For such local production and distribution of gas in 1937 the Gas Department consumed relatively small quantities of coal, most of which originated in West Virginia and the remainder in Virginia; of coke, all of which originated in Virginia, and of oil purchased from a bulk storage terminal in the City of South Norfolk, Virginia, owned by an oil company entirely unrelated to the Petitioner. All coal and coke for the operations of the Gas Department can not only be obtained in Virginia but also can be transported by purely intrastate routes. The oil purchased
5705 in Virginia by the Gas Department is supplied from a large quantity of oil held in such bulk storage terminal for general distribution and constitutes only 7% of the total oil of all grades which is distributed from that terminal.

As of April 30, 1938, there were 112 employees in the Gas Department. The entire personnel of the Gas Department, excepting only the top executives and general office services, is separate and distinct from that of either of the other two departments and performs no services for either of the other two departments. The facilities used in the conduct of the Gas Department are entirely separate and distinct from either of the other two departments. The Gas Department is separately recognized in Petitioner's ac-

counting. In public supervision and regulation the Gas Department is treated separately by the appropriate State regulatory bodies in the determination of valuation, revenues, expenses, taxes, and depreciation.

Petitioner denies the jurisdiction of the Board over its Gas Department and the employees therein and over the labor relations between Petitioner and the employees in such department.

(c) The Electric Department is engaged in the production, transmission, and distribution of electric energy in eastern Virginia and northeastern North Carolina, serving within such area the Cities of Richmond, Norfolk, Portsmouth, Petersburg, Hopewell, Suffolk and South Norfolk, Virginia, and the City of Roanoke Rapids, North Carolina, together with other communities of less importance.

Petitioner's Electric Department has no facilities or operations in any States other than Virginia and North Carolina. The proportion of the output of the Electric Department supplied to railroads and similar facilities is very small.

As of April 30, 1938, there were 1,169 employees in the Electric Department. The entire personnel of the Electric Department below the rank of Vice President, except only general
5706 office services, is separate and distinct from that of either of the other two departments and performs no services for either of the other two departments. The services, wage levels, and classification of employees of the Electric Department are different in character from those of either of the other two departments. The Electric Department is separately recognized in Petitioner's accounting. All of the facilities and property used in the conduct of the Electric Department are separate and distinct from those of either of the other two departments, except for a small amount of property used jointly to avoid duplication of facilities, by the Electric Department with the street railways. In public supervision and regulation the Electric Department is treated separately by the appropriate Federal and State regulatory bodies in the determination of valuation, revenues, expenses, taxes, and depreciation. The employees of the Electric Department exclusively superintend and perform the functions of production, transmission, and distribution, and construction, repair, and maintenance incidental thereto.

Petitioner does not assign as error the exercise of jurisdiction by the Board over its Electric Department and the employees therein and over the labor relations between such employees and the Petitioner.

III

On or about May 30, 1937, Everard M. Mann, an employee in the Transportation Department, was discharged for breach of discipline. On July 20, 1937, the Transport Workers Union of America (hereinafter called the "T. W. U.") filed with the Regional Director for the Fifth Region (Baltimore, Maryland) charges that Petitioner had engaged in and was engaging
5707 in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, by discharging said Everard M. Mann for membership in and activity on behalf of the complaining labor organization. On August 26, 1937, the T. W. U. filed with said Regional Director an amended charge, in which it was asserted in addition to the foregoing charges, that Petitioner had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (2) of the Act by causing to be formed and dominating and interfering with the administration of a labor organization known as The Independent Organization of Employees of Virginia Electric and Power Company (hereinafter called the "I. O. E.").

On February 23, 1938, Amalgamated Association of Street, Electrical Railway and Motor Coach Employees of America (hereinafter called the "Amalgamated") filed with said Regional Director charges that the Petitioner had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act.

On March 31, 1938, J. L. Judge, a second-class lineman, and T. N. Harrell, Jr., a third-class lineman, both employed in the Electric Department, were laid off as an incident of a general reduction of force throughout the Electric Department made necessary by an abrupt decline in construction work in that year.

On November 4, 1937, A. F. Staunton, a first-class lineman, employed in the Electric Department, resigned his employment in preference to becoming a member of the I. O. E. with which the Petitioner had entered into a "closed shop" agreement on August 5, 1937.

And on April 2, 1938, the International Brotherhood of Electrical Workers (hereinafter called the "I. B. E. W.") filed with said Regional Director a charge that said A. F. Staunton
5708 had been discharged by Petitioner for refusal to join a company dominated union, and that said T. N. Harrell, Jr., and J. L. Judge had been discharged on the ground of their membership in and activities on behalf of such complaining union and

that for the reasons charged the Petitioner had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act.

IV

1. On April 13, 1938, the Board ordered that the three proceedings be consolidated for the purpose of hearing, and under date of May 7, 1938, the Board, by said Regional Director, issued its complaint which, together with copies of the charges aforesaid, was served upon Petitioner on May 9, 1938.

2. The material parts of said complaint alleged that Petitioner had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act and particularly alleging in substance that Petitioner, its servants or agents, were interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

(a) By discouraging, through speeches, acts, and publications, membership in the T. W. U., Amalgamated and I. B. E. W.;

(b) By dominating, interfering with, and contributing financial and other support to a labor organization known as "The Independent Organization of Employees of Virginia Electric and Power Company"; and

(c) By discharging, because they engaged with other employees in concerted activities for collective bargaining and self-organization, Everard M. Mann, A. F. Staunton, Johnny L. Judge, and T. N. Harrell, Jr.

5709 3. The complaint which was served upon Petitioner, based upon the aforesaid charges, gave notice of hearing in the City of Norfolk, Virginia, on the 19th of May 1938, ten days after service, and the Board declined to grant requests for any postponement. In the interval between the issuance of the complaint and the hearing, the I. O. E. intervened as a party to the proceeding.

4. On May 14, 1938 Petitioner, duly reserving all its rights to object further to said complaint, filed its answer. By its said answer Petitioner admitted that it is engaged (1) in the business of intrastate transportation in Virginia; (2) in the manufacture and distribution of gas in the State of Virginia; and (3) in the production, transmission, and distribution of electricity in the States of Virginia and North Carolina, and that it furnishes electricity to some of its consumers for purposes of transportation, communication, and navigation. Petitioner also admitted by its said answer that on August 5, 1937 it had entered into an agreement with the I. O. E. providing, inter alia, that membership in

that organization should be a condition of employment; that pursuant to said contract of August 5, 1937 it had refused to retain employees who were eligible for membership in the I. O. E. but who were not members of that organization, and had made available on its property Bulletin Boards for the use of the I. O. E., and had accepted written orders, revocable by the employees, authorizing deduction from their wages and payment over to the I. O. E. of the amounts of their dues to said organization, and had from time to time conferred in the ordinary course of business with the independent officers of the I. O. E.

Petitioner denied all of the other material allegations of the charges and complaint and specifically denied that it had discharged or laid off the individuals named in the complaint
5710 because of union activities or membership; denied that it had refused to reemploy said individuals or any of them because of such activity or membership, and, in addition, affirmatively alleged the facts and circumstances pertaining to the discharge or lay-off of said individuals. Petitioner further denied that it had dominated, interfered with, or contributed financial or other support to the I. O. E., and denied that it had encouraged or discouraged membership in any labor organization. Petitioner further denied that it had committed or engaged in any unfair labor practices within the meaning of said Act; denied that the matters and things alleged in said complaint affected interstate commerce in such a manner as to permit regulation and control thereof by the Federal Government and denied that each and all of its operations, either separately or collectiveiy, were or are in or affect or tend to affect interstate commerce, and denied that the National Labor Relations Board had jurisdiction thereover. Petitioner specifically denied that the operations of its Transportation Department and its Gas Department and any labor disputes in or which might arise in either of said departments, either separately or collectively, were or are in or affect or tend to affect interstate commerce and denied that the Board had jurisdiction over either of said departments or the employees therein or the labor relations between Petitioner and the employees in said departments.

The contents of said answer will more fully appear in the copy thereof prayed to be hereafter filed in this Court as a part of the record in this proceeding before the Board, and reference thereto is hereby made.

5. On May 19, 1938, the hearing before the Trial Examiner appointed by the Board began in the City of Norfolk and continued from that date through June 18, 1938. During
5711 the course of the hearing, on motion of counsel for the Board, said complaint was amended to include the names

of Robert E. Elliott, Jr., and James Bolton, both employees of the Transportation Department, among employees alleged to have been discharged by Petitioner because they engaged in concerted activities for collective bargaining and self-organization. Petitioner thereupon amended its answer to deny that it had discharged or laid off the individuals named in the amended complaint because of union activity and membership, and affirmatively alleged the facts and circumstances pertaining to the discharge or lay-off of said individuals.

Petitioner, without waiving any of the defenses taken in its said answer, introduced evidence on the merits of the complaint.

6. On September 13, 1938 an Intermediate Report substantially adverse to Petitioner was made by Trial Examiner, to which Report Petitioner duly filed its exceptions with the Board and a motion to dismiss the complaint. Oral argument in support of said motion and exceptions was heard by the Board and the case was submitted for decision on April 13, 1939.

7. On the 27th day of February 1940, the Board handed down it. Decision and Final Order which is the subject of this petition to this Honorable Court. The contents of said Decision and Final Order will more fully appear in a copy thereof prayed to be hereafter filed in this cause as a part of the record in said proceeding before the Board and reference to said Decision and Final Order is hereby made for the full text thereof.

Said Decision and Final Order direct your Petitioner and its officers, agents, successors, and assigns to:

"1. Cease and desist from:

5712 "(a) In any manner dominating or interfering with the administration of Independent Organization of Employees of Virginia Electric and Power Company, or the formation or administration of any other labor organization of its employees, or contributing support to Independent Organiaztion of Employees of Virginia Electric and Power Company, or any other labor organization of its employees;

"(b) In any manner giving effect to its contract heretofore described with Independent Organization of Employees of Virginia Electric and Power Company or to any extension, renewal, modification, or supplement thereof, or to any successor contract with Independent Organization of Employees of Virginia Electric and Power Company which may now be in force;

"(c) Discouraging membership in Transport Workers Union of America, Amalgamated Association of Street, Electrical Railway, and Motor Coach Employees of America, International Brotherhood of Electrical Workers, or any other labor organization of its employees, or encouraging membership in Independent

Organization of Employees of Virginia Electric and Power Company, or any other labor organization of its employees, by discharging, laying off, or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment;

"(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing or to engage in concerted activities for the purposes of collective
5713 bargaining and other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

"2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

"(a) Withdraw all recognition from Independent Organization of Employees of Virginia Electric and Power Company as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of employment and completely disestablish Independent Organization of Employees of Virginia Electric and Power Company as such representative;

"(b) Offer to Everard M. Mann, Robert E. Elliott, Jr., A. F. Staunton, and T. N. Harrell, Jr., immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

"(c) Make whole Everard M. Mann and T. N. Harrell, Jr., and each of them for any loss of pay he may have suffered by reason of the respondent's discrimination against him by payment to each of them of a sum of money equal to that which he normally would have earned as wages from the date of his discharge or lay-off to the date of the offer of reinstatement, less his net earnings during said period; deducting from the amount otherwise due him monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects; and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other
5714 government or governments which supplied the funds for said work-relief projects;

"(d) Make whole Robert E. Elliott, Jr., and A. F. Staunton, and each of them for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to each of them of a sum of money equal to that which he normally would have earned from the date of his discharge to the date of the Intermediate Report and from the date of this Order to

the date of the respondent's offer of reinstatement, less his net earnings during said periods; deducting, however, from the amount otherwise due him monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects; and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

"(e) Reimburse each of its employees who were members of Independent Organization of Employees of Virginia Electric and Power Company for all the dues and assessments, if any, which it has deducted from their wages on behalf of Independent Organization of Employees of Virginia Electric and Power Company;

"(f) Post immediately in conspicuous places throughout the respondent's system and maintain for a period of at least sixty (60) consecutive days notices to its employees stating that the respondent will cease and desist as provided in paragraph 1, that it will take the affirmative action set forth in paragraphs
5715 2 (a), (b), (c), (d), and (e) of this Order, that the respondent's employees are free to become or remain members of Transport Workers Union of America, Amalgamated Association of Street, Electrical Railway, and Motor Coach Employees of America, or International Brotherhood of Electrical Workers, and that the respondent will not discriminate against any employee because of membership or activity in such organizations;

"(g) Notify the Regional Director for the Fifth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith."

8. Petitioner is aggrieved by said Decision and Final Order of the Board and is, therefore, entitled under and by virtue of said Section 10, subsection (f) of the National Labor Relations Act to obtain a review of such Order by filing a written petition in the United States Circuit Court of Appeals for the Fourth
5716 Circuit, wherein the unfair labor practices here involved are alleged to have been committed, and wherein the Petitioner resides and transacts business as hereinabove set forth; and Petitioner accordingly avers that this Honorable Court has jurisdiction to review and set aside said Final Order of the Board.

V

Petitioner avers that said Decision and Final Order of the Board is erroneous, unauthorized, and insufficient in law and without evidence to support it and should be reviewed and set aside by this Honorable Court for these among other reasons apparent on the Record:

1. The Board is without jurisdiction of Petitioner or of Petitioner's employees:

(a) In its Transportation Department, for the reason that the operations of said department and the employment, operations, and functions of its employees engaged therein are strictly local and intrastate and are not in and do not affect interstate commerce and constitute a separate and independent enterprise functionally and practically unrelated to either of Petitioner's other departments or to any enterprise in or affecting interstate commerce;

(b) In its Gas Department, for the reason that the manufacture and distribution of gas by the Petitioner and the employment, operations, and functions of its employees engaged therein are strictly local and intrastate and are not in and do not affect interstate commerce, and constitute a separate and independent enterprise functionally and practically unrelated to either of *of* Petitioner's other departments or to any enterprise in or affecting interstate commerce;

5717 (c) The fact that the operations of Petitioner's Electric Department are in and affect interstate commerce does not invest the separate intrastate businesses of Petitioner's Gas Department and Transportation Department with an interstate character nor cause them to affect interstate commerce;

(d) There is no subsantial evidence that the operations of Petitioner or the employment, functions, or services of its employees in either (1) the Transportation Department, or (2) the Gas Department, inevitably or materially affect interstate commerce; or that the unfair labor practices alleged to have been committed by Petitioner, insofar as the same relate to either or both of said departments, inevitably or materially affect interstate commerce or tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce;

(e) There is no substantial evidence that the unfair labor practices alleged to have been committed by Petitioner have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States or tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce;

(f) There is no substantial evidence of any labor dispute, current or otherwise, or of any threat of dispute between Petitioner and any of its employees, affecting, burdening, or obstructing commerce within the meaning of *of* the Constitution or of the Act.

2. There is no substantial evidence to support, and the Board disregarded substantial affirmative evidence to the contrary

5718 in making, its findings of fact and conclusions of law, as follows:

(a) That Petitioner interfered with, restrained, and coerced its employees, in any of its three said departments in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed to them by Section 7 of the Act.

(b) That E. A. Bishop, Superintendent of the Norfolk Division of the Transportation Department, questioned about 15 of Petitioner's employees in 1936 concerning their knowledge of organizational activity among them, and that such action of Bishop, if it occurred, was with the knowledge, consent, and authority of Petitioner, or that Petitioner by such action, if it occurred, interfered with, restrained, and coerced its employees in the exercise of any right or rights guaranteed them under the Act;

(c) That William Edwards, an Inspector in the Norfolk Division of the Transportation Department, engaged in surveillance of several meetings of the T. W. U. or that such action by Edwards, if it occurred, was with the knowledge, consent or authority of Petitioner, or that Petitioner by such action, if it occurred, interfered with, restrained, and coerced its employees in the exercise of any right or rights guaranteed to them under the Act; and that said Edwards warned Jesse Smith and Raymond Hopkins, employees in the Norfolk Transportation Division, "that the employees would keep 'messing around' with the C. I. O. until they lost their jobs" with the knowledge, consent or authority of
5719 the Petitioner, or that Petitioner by such action of said Edwards, if it occurred, interfered with, restrained, and coerced its employees in the exercise of any right or rights guaranteed to them under the Act;

(d) That Petitioner's April 26, 1937 Bulletin "reveals a marked bias against what it calls 'national' labor organizations" and was "an appeal to the employees to bargain with the respondent directly, without the intervention of an 'outside' union" and that "by posting the bulletin the respondent interfered with, restrained, and coerced its employees" in the exercise of any right or rights guaranteed to them under the Act;

(e) That Petitioner's May 24, 1937 Addresses to its employees "urged" its empoyees to organize "independently of 'outside' assistance" and "gave the initial impetus to the formation of a system-wide labor organization" and "reemphasizing" Petitioner's "distaste for 'outside' organizations," implied that self-organization of the employees in the Gas and Transportation Departments "was in any event subject to the respondent's sufferance," and that by such addresses Petitioner interfered with, restrained, and co-

erced its employees in the exercise of rights guaranteed to them under the Act;

(f) That "the mechanics of the meetings of May 24, no less than the speech itself, assured the formation of an 'outside' union," and that by the events of such meetings Petitioner interfered with, restrained, and coerced its employees in any of its departments in the exercise of any right or rights guaranteed to them under the Act;

(g) That the actions of Petitioner's officers or agents at the
5720 May 24, 1937 Meetings of its employees and thereafter "converted the delegates, isolated from their constituents and under the immediate influence of officials, into virtual representatives of the employer among the employees who had elected them," and that by said officers or agents Petitioner interfered with, restrained, and coerced its employees in any of its departments in the exercise of any right or rights guaranteed to them under the Act;

(h) That at meetings held in all of Petitioner's departments the employees "pursuant to the suggestions contained in the addresses of May 24," voted to form an independent organization and elected representatives for that purpose, and that Petitioner thereby interfered with, restrained, and coerced its employees in any of its departments in the exercise of any right or rights guaranteed to them under the Act, or that Petitioner thereby dominated and interfered with the formation and administration of such organization in violation of Section 8 (2) of the Act;

(j) That meetings of employees or of representatives of employees were held on Petitioner's property and that Petitioner's facilities, including telephones, were used by employees or representatives of employees for purposes of association, solicitation, or self-organization, either with the cooperation of Petitioner's supervisory employees or with the knowledge, consent, or authority of Petitioner, and that thereby Petitioner dominated and interfered with the formation and administration of the I. O. E. and contributed support to it in violation of Section 8 (2) of the Act, and thereby interfered with, restrained and coerced its employees in any of its said departments in the exercise of any right
5721 or rights guaranteed to them under the Act in violation of Section 8 (1) of the Act;

(k) That Petitioner, because of their membership in or activity on behalf of any union, and for the purposes of discouraging membership in the T. W. U., Amalgamated, and I. B. E. W., and not for good cause, discharged Everard M. Mann, A. F. Staunton, Robert E. Elliott, Jr., and T. N. Harrell, Jr., and thus discriminated with respect to hire and tenure of employment of said persons named in violation of Section 8 (3) of the Act, and

thereby interfered with, restrained and coerced its employees in any of its departments in the exercise of any right or rights guaranteed to them under the Act in violation of Section 8 (1) of the Act;

(l) That A. F. Staunton has not obtained other regular and substantially equivalent employment since his discharge; and

(m) That Robert E. Elliott, Jr., has not obtained other regular and substantially equivalent employment since his discharge.

3. The Board failed to find, as it should have found:

(a) That Robert E. Elliott, Jr., since his discharge, has obtained other regular and substantially equivalent employment and, therefore, under Section 2 (3) of the Act has ceased to be an employee of the Petitioner and is not entitled to be and should not be ordered to be, reinstated.

(b) That A. F. Staunton, since his discharge, has obtained other regular and substantially equivalent employment and, therefore, under Section 2 (3) of the Act has ceased to be an employee of Petitioner and is not entitled to be, and should not be ordered to be, reinstated.

4. The Board further erred in finding that Petitioner's April 26, 1937, Bulletin and May 24, 1937, addresses to its em-
5722 ployees were violations of Section 8 (1) and (2) of the Act, such findings being unsupported by evidence, contrary to the evidence, dependent upon a false view of the meaning and purpose of the Act, and in violation of the right of freedom of speech of the Petitioner, its agents and employees, under the First Amendment to the United States Constitution.

5. The Board erred in ordering Petitioner to cease and desist from the actions enumerated in Paragraph 1, Subparagraphs (a), (b), (c), and (d) of said Order for the reason that the findings of fact and conclusions of law upon which said paragraph of said Order is based are each and all unwarranted by the facts as disclosed by substantial evidence, are unsupported by substantial evidence, are erroneous and contrary to law, and, insofar as sought to be applied to Petitioner's Transporation Department and Gas Department, are beyond the jurisdiction of the Board.

6. The Board erred in ordering Petitioner to take the affirmative action specified in said Order:

(a) For the reason that the findings of fact and conclusions of law upon which such remedy is predicated are unwarranted by the facts as disclosed by substantial evidence, are not supported by substantial evidence, are erroneous and contrary to law, and, insofar as sought to be applied to Petitioner's Transportation Department and Gas Department, are beyond the jurisdiction of the Board; and

(b) For the further reason that said Order is beyond the authority of said Board in the following particulars:

(i) In ordering Petitioner not only to "withdraw all recognition" from the I. O. E., but also to "completely disestablish" said I. O. E., for the reason that said Board is without authority
5723 to order Petitioner to take any step "to disestablish" any labor organization beyond a withdrawal of all recognition of such organization as the representative of any of its employees for the purpose of collective bargaining;

(ii) In ordering Petitioner to make whole Everard M. Mann, Robert E. Elliott, Jr., A. F. Staunton, and T. N. Harrel, Jr., for any loss of pay that they may have suffered by reason of discriminatory discharge and requiring Petitioner to deduct, however, from the amount otherwise due each of said persons named "monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects";

(iii) In ordering Petitioner to "reimburse each of its employees who were members of Independent Organization of Employees of Virginia Electric and Power Company for all the dues and assessments, if any, which it has deducted from their wages on behalf of Independent Organization of Employees of Virginia Electric and Power Company."

(iv) In ordering Petitioner to post notices, as required by Paragraph 2 (f) of said Order that it will cease and desist from the unfair labor practices forbidden by said Order.

VI

Wherefore, your Petitioner respectfully prays:

1. That a copy of this petition be forthwith served according to law upon the National Labor Relations Board;

2. That said Decision and Final Order of the National Labor Relations Board be reviewed, reversed, vacated, and an-
5724 nulled and set aside and that said Board be ordered to dismiss the proceeding pending before it against your Petitioner;

3. That said Board be required forthwith and not exceeding forty days after service upon it of this petition for review to certify to this Honorable Court a copy of the transcript of the entire record in said proceeding before it, including the pleadings, testimony upon which the Order complained of was entered, the

report of the Trial Examiner, and the findings and order of the Board in accordance with Section 10, Subdivision (f) of the National Labor Relations Act;

4. That pending a hearing and final determination of this petition, this Honorable Court may issue a restraining order staying and enjoining any and all proceedings or action which the National Labor Relations Board might take to enforce its said Order of the 27th day of February 1940; and

5. That the Petitioner may be granted such other and further relief in the premises as the nature of this case may require and as to this Court may seem meet.

And your Petitioner will every pray, etc.

VIRGINIA ELECTRIC AND POWER COMPANY,
By T. JUSTIN MOORE, *Counsel.*

[*Duly sworn to by J. Justin Moore; jurat ommitted in printing.*]

5728 In United States Circuit Court of Appeals
Case No. 4616

Answer of the National Labor Relations Board and request for enforcement

Filed June 4, 1940

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Fourth Circuit:

Comes now the National Labor Relations Board and, pursuant to the National Labor Relations Act (49 Stat. 449, c. 372, 29 U. S. C. Sec. 151, et seq.), files its answer to the petition to review and its request for enforcement of its order against petitioner. The Board respectfully shows as follows:

1. The Board admits the allegations contained in part I of the petition to review.

2. Answering the allegations contained in parts II, III, and IV of the petition to review, the Board prays reference to the certified transcript of the entire record in the proceeding before the Board, heretofore filed herein, for a full, exact, and complete statement of all the proceedings had in this case, including the pleadings, testimony, and evidence, findings of fact, conclusions of law, and order of the Board. Further answering, the Board admits the allegations of paragraph 8 of part IV of the petition to review.

3. The Board denies each and every allegation contained in part V of the petition to review.

Wherefore, having answered each and every allegation
5729 in the petition to review, the Board respectfully prays this

Honorable Court that said petition be denied in so far as it prays (a) that the order of the Board be reversed, vacated, annulled, and set aside, and (b) that any and all proceedings to enforce the said order be stayed.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the National Labor Relations Act, respectfully requests this Honorable Court for the enforcement of its order, dated February 27, 1940, issued against petitioner in Cases Nos. C-914, C-915, and C-916, entitled "In the Matter of Virginia Electric & Power Company and Transport Workers Union of America; In the Matter of Virginia Electric & Power Company and Amalgamated Association of Street, Electrical Railway and Motor Coach Employees of America, an Unincorporated Association; In the Matter of Virginia Electric & Power Company and International Brotherhood of Electrical Workers."

In support of this request for enforcement of this order the Board respectfully shows as follows:

(a) Petitioner is a Virginia corporation transacting business in the State of Virginia, within this judicial circuit. This Court has jurisdiction of the petition to review herein and of this request for enforcement by virtue of Section 10 (e) and (f) of the National Labor Relations Act.

(b) Upon all the proceedings had in said matters before the Board, as more fully shown by the certified transcript of the entire record thereof, heretofore filed herein, to which reference is hereby made, and including, without limitation, complaint, answer, hearing for the purpose of taking testimony and receiving other evidence, Intermediate Report and exceptions filed thereto, and written and oral argument before the Board, the Board on February 27, 1940, made its decision, duly stated its findings
5730 of fact and conclusions of law, and issued the following order directed to petitioner, its officers, agents, successors, and assigns:

ORDER

On the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Virginia Electric and Power Company, Richmond, Virginia, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner dominating or interfering with the administration of Independent Organization of Employees of Virginia Electric and Power Company, or the formation or administration

of any other labor organization of its employees, or contributing support to Independent Organization of Employees of Virginia Electric and Power Company, or any other labor organization of its employees;

(b) In any manner giving effect to its contract heretofore described with Independent Organization of Employees of Virginia Electric and Power Company or to any extension, renewal, modification, or supplement thereof, or to any successor contract with Independent Organization of Employees of Virginia Electric and Power Company which may now be in force;

(c) Discouraging membership in Transport Workers Union of America, Amalgamated Association of Street Electrical Railway, and Motor Coach Employees of America, International Brotherhood of Electrical Workers, or any other labor organization of its employees, or encouraging membership in Independent Organization of Employees of Virginia Electric and Power Company, or any other labor organiaztion of its employees, by discharging, laying off, or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining and other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Independent Organization of Employees of Virginia Electric and Power Company as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of employment and completely disestablish Independent Organization of Employees of Virginia Electric and Power Company as such representative;

5731 (b) Offer to Everard M. Mann, Robert E. Elliott, Jr., A. F. Staunton, and T. N. Harrell, Jr., immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

(c) Make whole Everard M. Mann and T. N. Harrell, Jr., and each of them for any loss of pay he may have suffered by reason of the respondent's discrimination against him by payment to each of

them of a sum of money equal to that which he normally would have earned as wages from the date of his discharge or lay-off to the date of the offer of reinstatement, less his net earnings during said period; deducting from the amount otherwise due him monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects; and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work relief projects;

(d) Make whole Robert E. Elliott, Jr., and A. F. Staunton, and each of them for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to each of them of a sum of money equal to that which he normally would have earned from the date of his discharge to the date of the Intermediate Report and from the date of this Order to the date of the respondent's offer of reinstatement, less his net earnings during said periods; deducting, however, from the amount otherwise due him monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects; and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(e) Reimburse each of its employees who were members of Independent Organization of Employees of Virginia Electric and Power Company for all the dues and assessments, if any, which it has deducted from their wages on behalf of Independent Organization of Employees of Virginia Electric and Power Company;

(f) Post immediately in conspicuous places throughout the respondent's system and maintain for a period of at least sixty (60) consecutive days notices to its employees stating that the respondent will cease and desist as provided in paragraph 1, that it will take the affirmative action set forth in paragraphs 2 (a), (b), (c), (d), and (e) of this Order, that the respondent's employees are free to become or remain members of Transport Workers Union of America, Amalgamated Association of Street, Electrical Railway, and Motor Coach Employees of America, or International Brotherhood of Electrical Workers, and that the respondent will not discriminate against any employee because of membership or activity in such organizations;

(g) Notify the Regional Director for the Fifth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

It is further ordered that the allegations of the complaint with respect to Joseph Bolton and J. L. Judge be, and they hereby are, dismissed.

5732 Wherefore, the Board respectfully prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement to be served upon petitioner, that this Court take jurisdiction of the proceedings and of the questions determined therein, and make and enter upon the pleadings, testimony, and evidence and the other proceedings set forth in the transcript, and upon the order made thereon set forth in paragraph (b) hereof, a decree denying in whole the petition to set aside the order of the Board and enforcing in full said order of the Board and requiring petitioner, its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD,
By ROBERT B. WATTS,
Robert B. Watts,
Associate General Counsel.

Dated at Washington, D. C., this 3rd day of June 1940.

5733 [*Duly sworn to by Robert B. Watts; jurat omitted in printing.*]

5735 In United States Circuit Court of Appeals
Case No. 4652

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

Petition of the Independent Organization of Employees of the Virginia Electric and Power Company to review and set aside an order of the National Labor Relations Board, dated February 27, 1940

To the Honorable Judges of the United States Circuit Court of Appeals for the Fourth Circuit:

The Independent Organization of Employees of the Virginia Electric and Power Company, an unincorporated labor organization, respectfully represents and shows unto the Court the following facts as the grounds for the relief hereinafter

5736 prayed.

(1) Your petitioner is a labor organization as defined by Section 2, subsection 5, of the National Labor Relations Act

of July 5, 1935, and is an unincorporated association admitting to membership all employees of Virginia Electric and Power Company below the grade of foreman or a similar grade.

(2) Your petitioner has been recognized by Virginia Electric and Power Company as the exclusive bargaining agent for its members, and has been operating under a written contract with Virginia Electric and Power Company since August 5, 1937, and the original contract, as last amended on June 14, 1939, is still in force and effect.

(3) On May 7, 1938, the National Labor Relations Board, acting through its Regional Director, issued its complaint against the Virginia Electric and Power Company, alleging that the Virginia Electric and Power Company had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6), and (7) of the National Labor Relations Act. The complaint alleged specifically that since about May 1, 1937, the Virginia Electric and Power Company had dominated and interfered with your petitioner and contributed support to it, and further charging that the contract entered into on or about August 5, 1937, between Virginia Electric and Power Company and your petitioner was entered into with a labor organization which had been established, maintained and assisted by unfair labor practices, and which was not the representative of the employees of Virginia Electric and Power
5737 Company, as provided in Section 9 (a) of the National Labor Relations Act.

vention in this proceeding before the National Labor Relations Board, and was permitted to intervene with respect to the alleged unfair labor practices charged within the meaning of Section 8 (2) of the National Labor Relations Act. Your petitioner actively participated in the hearings conducted before the Trial Examiner for the National Labor Relations Board, in the City of Norfolk, Virginia, from May 19, 1938, through June 18, 1938, and subsequently filed brief and took part in oral argument before said Trial Examiner.

(5) On September 13, 1938, the Trial Examiner filed his intermediate report, in which he found that the Virginia Electric and Power Company had engaged in all of the unfair labor practices affecting commerce charged in the complaint within the meaning of Section 8 (2) of the National Labor Relations Act, and on September 23, 1938, your petitioner filed exceptions to the intermediate report of the Trial Examiner, and, subsequently, filed a brief and took part in oral argument before the National Labor Relations Board.

(6) On the 27th day of February 1940, the National Labor Relations Board handed down its decision and final order, direct-

ing Virginia Electric and Power Company, its officers, agents, successors and assigns to:

"1. Cease and desist from:

"(a) In any manner dominating or interfering with the administration of Independent Organization of Employees of Virginia Electric and Power Company, or the formation or administration of any other labor organization of its employees, or contributing support to Independent Organization of Employees of
5738 Virginia Electric and Power Company, or any other labor organization of its employees;

"(b) In any manner giving effect to its contract heretofore described with Independent Organization of Employees of Virginia Electric and Power Company or to any extension, renewal, modification, or supplement thereof, or to any successor contract with Independent Organization of Employees of Virginia Electric and Power Company which may now be in force;

"(c) Discouraging membership in Transport Workers Union of America, Amalgamated Association of Street, Electrical Railday, and Motor Coach Employees of America, International Brotherhood of Electrical Workers, or any other labor organization of its employees, or encouraging membership in Independent Organization of Employees of Virginia Electric and Power Company, or any other labor organization of its employees, by discharging, laying off, or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment;

"(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing or to engage in concerted activities for the purposes of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

"2. Take the following affirmative action which the Board finds will effectuate the policies of the Act;

"(a) Withdraw all recognition from Independent Organization of Employees of Virginia Electric and Power Company as the representative of any of its employees for the purpose of dealing with the resopndent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of empioyment, and completely disestablish Independent Oroganization of Employees of Virginia Electric and Power Company as such representative."

(7) The Virginia Electric and Power Company has heretofore filed a petition in this Court to review and set aside the aforesaid order of the National Labor Relations Board, which cause, No. 4616, is now pending in this Court. Your petitioner is a person aggrieved by the aforesaid final order of the National Labor Relations Board, entered February 27, 1940, within the
5739 meaning of Section 10 (f) of the National Labor Relations Act (29 U. S. C. A., Sec. 160 (f)), and desires to petition this Court to review and set aside so much of the aforesaid final order of the National Labor Relations Board as directs the Virginia Electric and Power Company to withdraw recognition from your petitioner as the representative of any of the employees of the Virginia Electric and Power Company for the purpose of dealing with said Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of employment, and forbids the Virginia Electric and Power Company from in any manner giving effect to its contract with your petitioner or to any successor contract.

(8) Your petitioner contends that there is no substantial evidence to support the following finds of fact and conclusions of law of the National Labor Relations Board.

(a) That your petitioner owes its existence and its form to activities of Virginia Electric and Power Company, and that the Virginia Electric and Power Company has dominated and interfered with the formation and administration of your petitioner, and has contributed support to it.

(b) That the employees of Virginia Electric and Power Company voted to form an independent organization pursuant to the suggestions contained in the addresses of Holtzclaw and Throckmorton, on May 24, 1937.

(c) That membership cards of your petitioner were circulated in the plant of the Virginia Electric and Power Company, and that there was widespread solicitation by representatives of your petitioner on the premises of the Virginia Electric
5740 and Power Company throughout the entire system, and that many such cards were signed on the premises during working hours.

Wherefore, your petitioner respectively prays that a copy of this petition be served, according to law, upon all parties to this proceeding; that the aforesaid decision and final order of the National Labor Relations Board be reviewed, reversed, vacated, and annulled so far as the same affects your petitioner; that this proceeding be consolidated for hearing with the pending proceeding, No. 4616, styled Virginia Electric and Power Company

v. National Labor Relations Board, and that your petitioner may be granted such other and further relief in the premises as the nature of this case may require and as to this Court shall seem meet.

And your petitioner will ever pray, etc

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF VIRGINIA ELECTRIC AND POWER COMPANY,

By A. C. CARTLEDGE,
Chairman of the General Committee.

Attest:

M. E. WASH,
Secretary of the General Committee.

PAUL E. HUDLICK,
WM. EARLE WHITE,
Attorneys for Petitioner.

5741 [*Duly sworn to by A. C. Cartledge and M. E. Wash; jurat omitted in printing.*]

5743 In United States Circuit Court of Appeals

Case No. 4652

Answer of the National Labor Relations Board to the Petition for Review

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Fourth Circuit:

Comes now the National Labor Relations Board and, pursuant to the National Labor Relations Act (49 Stat. 449 c. 372, 29 U. S. C. Sec. 151, et seq.), files its answer to the petition to review filed herein by the Independent Organization of Employees of the Virginia Electric and Power Company. The Board respectfully shows as follows:

1. Answering the allegations contained in paragraphs 1-6, inclusive, of the petition to review, the Board prays reference to the certified transcript of the entire record in the proceedings before the Board, heretofore filed in this Court in the proceeding known as "Virginia Electric and Power Company v. National Labor Relations Board, No. 4616," for a full, exact, and complete statement of the pleadings, testimony, and evidence, findings of fact, conclusions of law, and order of the Board and all other proceedings had in said matter before the Board. The order sought to be set aside herein is the same order sought to be set

aside in No. 4616, wherein the Board has duly filed its answer to the petition for review and its request for enforcement of
5744 said order against the Virginia Electric and Power Company.

2. The Board admits the allegations of paragraph 7 of the petition to review.

3. The Board denies the allegations contained in paragraph 8 of the petition to review.

Wherefore, the Board prays this Honorable Court that said petition be denied in so far as it prays that the Board's order be reversed, vacated, and annulled.

NATIONAL LABOR RELATIONS BOARD,

By ROBERT B. WATTS,
Robert B. Watts,
Associate General Counsel.

Dated at Washington, D. C., this 3 day of June 1940.

5745 [*Duly sworn to by Robert B. Watts; jurat omitted in printing.*]

5749 United States Circuit Court of Appeals, Fourth Circuit

No. 4616

VIRGINIA ELECTRIC AND POWER COMPANY, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 4652

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petitions for Review of Order of the National LaborRelations Board

(Argued October 14, 1940. Decided November 12, 1940)

5750 Before PARKER, SOPER, and DOBIE, Circuit Judges

George D. Gibson and T. Justin Moore (Stephen H. Sines, and Hunton, Williams, Anderson, Gay & Moore on brief) for

Petitioner in No. 4616, and William Earle White (Paul E. Hadlick on brief) for Petitioner in No. 4652, and Lester M. Levin, Regional Attorney, National Labor Relations Board. (Charles Fahy, General Counsel; Robert B. Watts, Associate General Counsel; Laurence A. Knapp, Assistant General Counsel; Mortimer B. Wolf and Owsley Vose, Attorneys, National Labor Relations Board, on brief) for Respondent.

Opinion

Filed Nov. 12, 1940

PARKER, Circuit Judge:

These are petitions to review and set aside an order of the National Labor Relations Board, which found that the Virginia Electric and Power Company had interfered with, restrained and coerced its employees in the exercise of rights guaranteed by the National Labor Relations Act, had dominated and interfered with the formation and administration of an employees' association, and had discriminated with respect to hire and tenure of employment in the discharge of certain employees. The order, in addition to the usual cease and desist provisions, directed the disestablishment of the employees' association as a bargaining agency and the reinstatement with back pay of four employees who had been discharged. Petitions to review and set aside the order have been filed both by the company and by the association of employees. The Board has filed answer asking enforcement of the order. Four questions are presented for our consideration: (1) whether the Board had jurisdiction with respect to the gas and
5751 transportation departments of the company's business; (2) whether there was substantial evidence that the company dominated or interfered with the formation or administration of the employees' association; (3) whether the findings as to discriminatory discharge were sustained by substantial evidence; and (4) whether there was evidence of other unfair labor practices which would sustain the cease and desist provision of the order.

1. THE QUESTION OF JURISDICTION

The company is a public utility engaged in the manufacture, distribution, and sale of electrical energy and artificial gas, and in the operation of street railways and local and interurban bus lines. It admits that with respect to its electrical business it is engaged in interstate commerce and is subject to the act, an admission which accords with the decision of the Supreme Court

in Consolidated Edison Co. v. N. L. R. B., 305 U. S. 197, and the decision of this Court in Appalachian Electric Power Co. v. N. L. R. B., 4 Cir., 93 F. 2d 985, 988. The company contends, however, that its gas and transportation businesses are local in character and are without the Board's jurisdiction. A sufficient answer to this position is the unitary character of the Company's business, which has resulted, notwithstanding the division into these departments, in the organization of a single association of its employees. It is clear that wage controversies or unfair labor practices in any department of such a business will have repercussions in other departments; and strife affecting the interstate commerce in which the company is engaged will be avoided only if the rights of all employees are properly safeguarded. Virginian Railway Co. v. System Federation No. 40, 4 Cir., 84 F. 2d 861, aff. 300 U. S. 515; Consolidated Edison Co. v. N. L. R. B., supra; N. L. R. B. v. Planters' Mfg. Co., 4 Cir., 105 F. 2d 750. Furthermore, it appears that in the operation of its
5752 transportation system the company during 1937 used 31,-253,514 kilowatt-hours of the electrical power generated in its electrical department and more than two and a half million gallons of gasoline brought from without the state. For operating its gas business that year, it received in interstate commerce more than three million gallons of crude oil, 10,821 tons of coal, and 3,800 tons of coke. As we said in the case of the Newport News Shipbuilding & Dry Dock Co. v. N. L. R. B., 101 F. 2d 841, 843: "* * * a sufficient ground for regulation appears in the effect of the purchases on interstate commerce, which is within the power and duty of Congress to regulate and protect. If practices in the business will affect such commerce, Congress, under the clearest principles, has the power to regulate them. We have so held with respect to manufacturing products grown within a state for transportation in interstate commerce. Mooresville Cotton Mills v. National Labor Relations Board, 4 Cir., 94 F. 2d 61. The Supreme Court so held with respect to the canning, packing, and shipping of agricultural products grown within a state but shipped in interstate commerce, Santa Cruz Fruit Packing Co. v. National Labor Relations Board, 303 U. S. 453, 58 S. Ct. 656, 82 L. Ed. 954. There can be no difference in principle between the case in which manufacture precedes and that in which it follows interstate commerce. If the flow of commerce is obstructed by labor disputes, it can make no difference from which direction the obstruction is applied."

We accordingly hold that the jurisdiction of the Board extended to the gas and transportation business of the company, as well as to its electrical business.

2. The Employees' Association

The principal question in the case is whether there is substantial evidence to support the finding that the company dominated and interfered with the formation and administration of the
5753 employees' association. We do not think that there is.

While there is evidence that, prior to the passage of the National Labor Relations Act, the attitude of the company had been opposed to organization of its employees by an outside union, and that its superintendent of transportation in Norfolk had, in 1936, been guilty of the unfair labor practice found by the Board, there is nothing to show that the employees' association does not represent the free choice of the employees, that the company at any time dominated or in any way interfered with the employees in setting it up or that the company exercises over it any control or domination whatsoever. There is evidence, it is true, that a bulletin of the company and an address by its president led to organizational activities on the part of the employees; but neither of these furnishes any basis for a finding of company domination; and the evidence leaves no doubt that the association was formed by the free and untrammeled action of the employees and constitutes a bona fide bargaining agency for them, free of company domination or interference.

In the service of the company there are 2,800 to 3,000 non-supervisory employees. From 1922 to 1937 there was no organization among them and only a scattered few belonged to labor unions. Prior to 1937, the attitude of the company had not been favorable to labor organization; and in 1933 its president had made an address to the employees calling their attention to provisions of the National Industrial Recovery Act and stating that it was the belief of the company that organization of employees for any purpose was "entirely unnecessary". Early in 1937, however, there was much industrial unrest throughout the country, and the decision of the Supreme Court, upholding the validity of the National Labor Relations Act, led to much discussion among laboring men and in the public press as to the rights and duties of employers and employees under the Act. In this situation, the company on April 26, 1937, posted on its bulletin boards
5754 a statement by its president addressed to its employees as to its attitude on labor problems.[1] That statement, after

[1] The Bulletin is as follows:

"*To Employees of the Company:*

"As a result of recent national labor organization activities and the interpretation of the Wagner Labor Act by the Supreme Court, employees of companies such as ours may be approached in the near future by representatives of one or more such labor organizations to solicit their membership. Such campaigns are now being pressed in various industries and in different parts of the country and strikes and unrest have developed in many localities. For the last fifteen years this company and its

calling attention to the recent decision of the Supreme Court, the industrial unrest and the activities of labor organizations, and after adverting to the satisfactory relationship which had theretofore existed between the company and its employees without labor organizations, went on to say that the company recognized the right of every employee to join any union that he might wish to join, and that such membership would not affect his position with the company. It added, however, that it should be
5755 made equally clear that it was not at all necessary for any employee to join any labor organization, despite anything that he might be told to the contrary. It concluded by stating that, if the employees, individually or as a group, had any matter which they wished to discuss with the company, the officers would gladly discuss it with them.

Following the posting of this bulletin, requests for increase of wages and change of working conditions were received from employees in a number of departments, and in at least one department there was attempt at organization with request for a wage increase of 50%. A meeting of the supervisory officials of the company was held to consider this situation; and it was decided that the president should make an address to the employees pointing out their rights under the National Labor Relations Act and the desirability of their choosing agents for the purpose of collective bargaining. The employees were accordingly asked to select from among themselves persons to hear the message of the president, and groups assembled in Richmond and Norfolk on May 24th for that purpose. The address of the president was written out and submitted to legal counsel in advance of its delivery. It was delivered by the president in person to the Richmond meeting of employees, and was read by one of the vice presidents to the Norfolk meeting. Nothing else of any significance was said by the president or vice president at either meeting, except that at the Richmond meeting the president told the

---

employees have enjoyed a happy relationship of mutual confidence and understanding with each other, and during this period there has not been any labor organization among our employees in any department, so far as the management is aware. Under these circumstances, we feel that our employees are entitled to know certain facts and have a statement as to the company's attitude with reference to this matter.

"The company recognizes the right of every employee to join any union that he may wish to join, and such membership will not affect his position with the company. On the other hand, we feel that it should be made equally clear to each employee that it is not at all necessary for him to join any labor organization despite anything he may be told to the contrary. Certainly, there is no law which requires or is intended to compel you to pay dues to, or to join any organization.

"This company has always dealt with its employees in full recognition of the right of every individual employee, or group of employees, to deal directly with the company with respect to matters affecting their interests. If any of you, individually, or as a group, at any time, have any matter which you wish to discuss with us, any officer or department head will be glad, as they always have been, to meet with you and discuss them frankly and fully. It is our earnest desire to straighten out in a friendly manner, as we have done in the past, whatever questions you may have in mind. It is reasonable to believe that our interests are mutual and can best be promoted through confidence and cooperation.

"(Signed) J. [illegible] Holtzclaw, *President*."

employees that any increase in wages arrived at by collective bargaining would be made effective as of June 1st. The address of the president was as follows:

"A substantial number of its employees representing various departments and various occupations have approached the company with the request that the company consider with them the matter of their working conditions and wages. In other
5756 words, they have requested collective bargaining. The company's position with respect to this was recently stated in a posted bulletin.

"In a company such as ours, if an individual operator for example should ask for himself better working conditions or wages, this company could not comply with his request without also making the same concessions to other similar operators. In such a case the operator who appealed individually would, as a practical matter, be bargaining collectively for all of his group, which is not the logical procedure.

"This company is willing to consider the requests mentioned above but feels that in fairness to all of its employees and to itself it should at the same time consider other groups who have not yet come to it. If the approaching negotiations are to be intelligent and fair to all properly concerned, they should be conducted in an orderly way and all interested groups should be represented in these discussions by representatives of their own choosing as provided in the Wagner National Labor Relations Act, which provides as follows:

"'SECTION 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain, collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.'

"The Wagner Act applies only to employees whose work is in or directly affects interstate commerce. Counsel for this company advise us that in their opinion the provisions of the Act do not apply to local transportation employees, to gas employees in Norfolk, or to certain strictly local employees of the light and power department. In spite of this, the company wants to make it perfectly clear that its policy is one of willingness to bargain with its employees in any manner satisfactory to the majority of its employees and that no employee will be discriminated against because of any labor affiliations he desires to make.

"The petitions and representations already received
5757 indicate a desire on the part of these employees at least to do their own bargaining, and we are taking this means of letting you know our willingness to proceed with such bargain-

ing in an orderly manner. In order to progress it would seem that the first step necessary to be taken by you is the formation of a bargaining agency and the selection of authorized representatives to conduct this bargaining in such an orderly manner.

"The Wagner Labor Act prohibits a company from 'dominating or interfering with the formation or administration of any labor organization or contributing financial or other support to it.'

"In view of your requests to bargain directly with the company and in view of your right to self-organization as provided in the law, it will facilitate negotiations if you will proceed to set up your organization, select your own officers and supervisors, adopt your own bylaws and rules, and select your representatives to meet with the company officials whenever you desire."

No comment upon or explanation of this address was made, except that at its conclusion the president

"explained to the employees that, in plain every-day English, that statement said that they had a right to do whatever they saw fit to do, and their actions must be determined by their own judgment; that neither the company nor any of its officers or executives were to interfere with them in the slightest degree in arriving at a conclusion as to whether they wished collective bargaining with the company, and if so, how they wished to carry out the collective bargaining."

At the conclusion of the meetings, employees asked questions as to what sort of organization the company desired the employees to form and were refused any advice by the officials. To a question as to whether they were required to join a labor organization, they were told that they were not. The officers of the company then withdrew from the meetings; and the
5758 employees, after some general discussion, adjourned with the understanding that they would report the president's address to the other employees and hold other meetings later to consider the matter of organization. On the next day all supervisory employees throughout the company's business were instructed that they should carefully refrain from offering advice to the men as to their organization or interfering in any way with their efforts to organize.

Following the meetings of May 24th, the men held various meetings in Richmond and Norfolk, at which votes were taken as to whether an independent or affiliated organization was desired for purposes of collective bargaining. Each man was given opportunity to freely express his choice, but only a few favored an affiliated organization, the overwhelming majority favoring an independent bargaining unit. Steering committees were then

formed, the services of an attorney of Petersburg, who had never been employed by the company, were secured, and a constitution and bylaws were drawn up, which were submitted to and adopted by the men in meetings held for that purpose. A membership campaign was then conducted, in which more than 90% of the employees enrolled in the association, officers were elected and a general or bargaining committee was set up.

The bargaining committee held a meeting over a week end at a hotel at Ocean View, Va., and drew up a trade agreement, covering wages, labor conditions and hours of work, which was promptly submitted to the officials of the company. A date was, thereupon, set for discussion of the proposed agreement between the committee and the company officials and two days were devoted to its consideration. The result was the signing on August 5th of a trade agreement of the general character contemplated by the National Labor Relations Act. See N. L. R. B. v. Highland Park Mfg. Co., 4 Cir., 110 F. 2d 632, 638. The record leaves no doubt that this agreement was the result of
5759 bona fide bargaining at arm's length and that it secured substantial benefits to the employees. Two matters were the subject of much controversy, the amount of the wage increase and the closed shop provision. Both were the subject of compromise. The wage increases demanded by the committee would have increased the annual pay roll by more than $1,000,000.00. The increases finally agreed upon resulted in an increase of approximately $600,000.00. The company opposed the provision for the closed shop, but acceded to it on condition that membership in the association should not preclude membership in any other labor organization that the men might desire to join.

The association has continued to function as the bargaining agent of the employees, and its grievance committees have handled many matters with the company. The trade agreement negotiated in 1937 runs from year to year, and negotiations by the company looking toward the elimination of the closed shop provision were in progress in May 1938, when they were cut short by the institution of these proceedings before the Board.

There is no contention that there is anything objectionable in the constitution or by laws of the association or in the trade agreement arrived at with the company or in the manner in which it was negotiated; and it is not contended that the company contributes any support to the association or dominates it in any way or in any way interferes with the control exercised over it by its members. The Board's finding of domination and interference is based upon the fact that the association came into being as a result of the May 24th meetings and the address of the

president, that the president at the meeting spoke of a wage increase to be negotiated by the organization, that the association was organized promptly and within a few weeks after these meetings, that meetings of employees looking to the organization of the association were held on the company's premises, that its bulletin boards were used for posting notices of these meet-
5760 ings and its telephone between Richmond and Norfolk used in connection therewith, and that persons were solicited for membership in the association on the company's premises. We do not think, however, that any of these circumstances, or all of them taken together, when viewed, as they must be, in the light of the surrounding circumstances shown by the record, constitute any substantial evidence of the domination or interference forbidden by the Act. As said by the Supreme Court in T. & N. O. R. Co. v. Railway Clerks, 281 U. S. 548, 568:

"The intent of Congress is clear with respect to the sort of conduct that is prohibited. 'Interference' with freedom of action and 'coercion' refer to well understood concepts of the law. The meaning of the word 'influence' in this clause may be gathered from the context. Noscitur a sociis. Virginia v. Tennessee, 148 U. S. 503, 519. The use of the word is not to be taken as interdicting the normal relations and innocent communications which are a part of all friendly intercourse, albeit between employer and employee. 'Influence' in this context plainly means pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls 'self-organization.' The phrase covers the abuse of relation or opportunity so as to corrupt or override the will, and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives for the purposes of this Act than in relation to well known applications of the law with respect to fraud, duress and undue influence. * * * Freedom of choice in the selection of representatives on each side of the dispute is the essential foundation of the statutory scheme."

We see no evidence of domination or interference in the fact that the company called the employees together and explained to them its desire for collective bargaining and their rights under the National Labor Relations Act. The purpose of the Act is to further collective bargaining as a means of securing industrial peace; and certainly a company, faced with unrest on the
5761 part of its employees and demands which can be satisfied only by the collective bargaining which the Act contemplates, is not to be deemed guilty of an unfair labor practice merely because it communicates to the employees its willingness to comply with the law and bargain with them accordingly. It should

be noted that, in the address of the president, the right of the employees to select representatives of their own choosing was made abundantly clear, and that the duty of the company and its officers to refrain from interference was properly emphasized: and we see nothing either in the address or in the surrounding circumstances from which the employees could have gained any contrary impression. No hostility towards any outside union was manifested; and, while the Board stresses the concluding paragraph of the address, there is certainly nothing in it, or in any other part of the address, to indicate a desire that the organization to be set up by the employees be not affiliated with an outside organization. On the contrary, the rights of employees were stressed by direct quotation from the labor act and the employees were expressly assured that the company was willing to bargain with them in any manner satisfactory to the majority, that no employe would be discriminated against because of labor affiliations and that the company was prohibited by law from dominating or interfering with the formation or administration of any labor organization or contributing financial or other support to it. If the company desired an inside, as opposed to an outside union, it did not say so; and the fact that the employees may have gathered that impression from past dealings with the company cannot supply the element of domination or interference which the Act proscribes. Cf. L. Grief & Bro. v. N. L. R. B., 4 Cir., 108 F. 2d 551, 557, 558; Ballston-Stillwater K. Co. v. N. L. R. B., 2 Cir., 98 F. 2d 758, 762.

It is suggested by counsel, although not in the Board's decision, that the company transcended proper bounds in suggesting
5762 an organization for all its employees instead of dealing with those who had made demands; but we see nothing in this. The Board had made no determination of the proper bargaining unit for the employees; and nothing in the address of the company's president had relation to the bargaining unit. It merely stated that requests relating to working conditions and wages should be considered in the light of the interest of all who would be affected thereby, and that all interested groups should be represented in discussions relating thereto by representatives of their own choosing as provided by law. There is nothing in the address to indicate that the company was unwilling to deal with representatives of different groups, if proper bargaining agencies were provided for them.

And we find no significance in the fact, adverted to by the Board, that the president, at the conclusion of his address at Richmond, stated that any increase in wages resulting from the

collective bargaining would date from June 1st. Increase in wages had already been demanded by several groups of employees. Organization for collective bargaining with respect to these increases was contemplated; and assurance that the increases arrived at would date from June 1st meant no more than that employees need not rush hastily into ill-advised organization, but might proceed carefully and deliberately without fear of loss as the result of delay. There was not the trace of a suggestion that any wage increase would be dependent upon the adoption of an inside organization or one favored by the company.

Certainly no significance attaches to the fact that the association was set up as a bargaining agency within a few weeks of the May 24th meetings. It took little time for the employees to call the initial meetings and express their preference as between an inside and an outside, or affiliated, union and to appoint steering committees. This done, it was a small matter for the steering committees, with the aid of an able lawyer, and with the 5763 experience of labor organizations throughout the country before them, to draft a satisfactory constitution and bylaws for the association and secure their approval and adoption. And, since the men had already voted overwhelmingly in favor of an inside organization, it did not require much time to secure the signing of the membership cards. The fact that a wage increase was in prospect doubtless did expedite the process; but we see nothing sinister in this. If the men had decided on an affiliated union as bargaining representative, the same cause would have hastened its organization; and we should not lose sight of the fact that throughout the process of organization and agreement, the employees had the advice and assistance of a skilled attorney, who was doubtless able to eliminate much of the lost motion which frequently attends enterprises of this character. There is nothing to suggest that the company, through supervisory employees or otherwise, aided or assisted in any way in the process of organization. There is indeed some evidence that one of the Norfolk superintendents, Bishop, by name, encouraged another organization of employees commenced by one Elliott and his associates, shortly before the May 24th meetings. But this effort came to naught and impeded rather than helped the organization of the association. Nothing in connection with this effort has any tendency to establish domination or interference by the company in connection with the formation or administration of the association.

And, on the facts here, we see no basis for the finding of domination or interference by reason of the meetings of employees or the solicitation of membership on company property, or the

use of the company's telephone facilities and bulletin boards. It appears that these meetings were initiated by the employees themselves and that the company had nothing to do with them. Furthermore, they were mere initial meetings, in which the employees were getting together; and no use was made of company property by the association after its organization. No
5764 supervisory employee suggested the use of company property even for these initial meetings. The men themselves asked minor supervisory employees that they be allowed to meet in rooms in company buildings, and their requests could hardly have been denied without an appearance of churlish disregard of their convenience. No one seems to have thought that such use would be construed as favoritism or interference, and there is nothing to indicate that the free expression of opinion by the employees or their free choice of a bargaining agency was in anywise affected thereby. While there is some evidence of solicitation of membership for the association on company property, there is evidence also of such solicitation of membership for outside unions. Cf. Mathieson Alkali Works v. N. L. R. B., 4 Cir., — F. 2d, —; Ballston-Stillwater K. Co. v. N. L. R. B., 2 Cir., 98 F. 2d 758, 762. Such solicitation was contrary to the company's instruction in either case; but among such a large number of employees it was practically impossible to prevent it entirely. The use of the company's telephone in communications between employees in Richmond and Norfolk, was without the knowledge of supervisory employees. So far as bulletin boards are concerned, only one use of the company's bulletin board is shown; and that was in connection with a preliminary meeting held following the president's address of May 24th. After the negotiation of the trade agreement, the association was permitted by its terms to erect its own bulletin boards on company property, which was of course proper. There is nothing in any of these circumstances, or in all of them taken together, sufficient to support a finding that the company was giving aid or assistance to the association, or was interfering in any way with the organization of its employees or their free exercise of choice in the selection of bargaining representatives. It is only as they tend to establish such interference that such circumstances have any significance. In many cases, of
5765 course, they are very significant; but when the limited use of company property and facilities here shown is judged in the light of the record, we do not think that it constitutes any substantial evidence upon which a finding of interference or domination could be predicated.

3. The Discharges

The Board found the company guilty of discriminatory discharges of employees Staunton, Elliott, Mann and Harrell. The cases of Staunton and Elliott are ruled by the decision with respect to the association. Their discharges resulted under the closed shop agreement because of their failure to join the association. When the association is sustained as a valid bargaining agency, their discharges must be held proper; for the closed shop provision is expressly provided for by section 8 (3) of the National Labor Relations Act. 29 U. S. C. A. 158 (3).

Mann's discharge is shown to have been due to insubordination and Harrell's to a reduction of the force in which he was employed; and any conclusion that the union affiliation of either had any connection with his discharge is pure speculation, unsupported by anything in the evidence. Mann's discharge occurred on June 1, 1937, shortly after the May 24th meetings and just after the company's supervisory employees had been expressly cautioned against interference with the organizational efforts of employees. It is hardly probable that he would have been discharged for union affiliation or activity when the company was proceeding so carefully to avoid the appearance of evil. Those responsible for his discharge testify that they did not so much as know that he was a member of a union or had favored that form of organization, and there is no evidence that they did.

Harrell was discharged in March 1938, when thirteen men
5766 were laid off in Norfolk due to a reduction of force in the electrical department. There is no question but that the reduction in force was made bona fide for reasons having no connection with union activity. Harrell was shown to be a hot headed, quarrelsome man who had given considerable trouble; and when the reduction of force became necessary he was selected as one of those to go. We can find no evidence that his union affiliation or activities had anything to do with the matter. He was not prominent in the union and there was no reason for the company to desire to be rid of him because of his union affiliation. It continued to employ other union men high in the councils of the union, and the idea that he was discharged because of union affiliation is nothing more than suspicion. As was well said by Judge Dobie for this court in Martel Mills v. N. L. R. B., 4 Cir., 114 F. 2d 624:

"Where economic considerations necessitate a contraction in the employer's labor force, the employer, in deciding which employees are to be retained, must be free to choose from the more capable and the more worthy. It would be an abuse of the terminology

of the Act if an employer were obliged to discriminate in favor of union men as against non-union men through fear of action by the Board and the courts."

4. Unfair Labor Practices

It is argued that the company was guilty of unfair labor practices, in addition to the domination of the association and the discriminatory discharge of the employees named. The Board, however, found the company guilty of unfair labor practices, in addition to these, only with respect to the questioning of employees by superintendent Bishop in 1936 and the making of statements by one Edwards, a supervisor, in June 1937. The Edwards statements may be briefly disposed of. Edwards was of minor supervisory position. Any antiunion expressions of his were contrary
5767 to the policy of the company and were clearly nothing more than the utterance of his own individual views. They fall under the rule which we laid down in the case of N. L. R. B. v. Mathieson Alkali Works, 4 Cir., — F. 2d —, as follows:

"There is some evidence of sporadic and occasional expressions of anti-union sentiment on the part of a few foremen including one or two in addition to those heretofore mentioned, but, without reviewing this in detail, it is sufficient to say that it furnishes no proof of any unfair attitude on the part of respondent, and was not of a character to justify a cease and desist order on the ground that the expressions were attributable to respondent under the doctrine of respondeat superior. If there were evidence that these foremen were speaking with the authority of respondent, or if their expressions of sentiment were so numerous or of such a character as to justify the inference that they were made with respondent's approval in furtherance of an anti-union policy, an order directing respondent to cease and desist from interfering with its employees in the exercise of the rights guaranteed by sec. 7 of the Act would be proper, even though it should not appear that anyone's affiliation had been changed thereby; for each employee has the right to be let alone in this respect by the employer and his representatives. Humble Oil & Refining Co. v. N. L. R. B. supra. But mere isolated expressions of minor supervisory employees, which appear to be nothing more than the utterance of individual views, not authorized by the employer and not of such a character or made under such circumstances as to justify the conclusion that they are an expression of his policy, will not ordinarily justify a finding against him."

Superintendent Bishop occupies such a position with the company that unfair labor practices on his part should be attributed

to the company on the principle respondeat superior, irrespective of actual authority, and would form a proper basis for a cease and desist order. N. L. R. B. v. A. S. Abell Co., 4 Cir., 97 F. 2d
951. The questioning of employees by Bishop in 1936, however, is not a matter of sufficient importance, when standing
5768 alone, to justify the granting of a cease and desist order here, in view of the fact that any effect of such questioning had unquestionably been dissipated by the company's action in 1937 and the formation of the association as a bargaining agency for the employees.

We recognize, of course, that it is for the Board and not us to decide upon the order necessary to remove the effect of an unfair labor practice found to have occurred; but where, as here, the order of the Board is predicated upon other matters, as to which it is reversed, cease and desist provisions, which clearly would not have been made in their absence, ought not be enforced because of an incidental finding as to an unfair labor practice of minor character which has long since ceased to be operative or to have any effect. A court of equity will not grant an injunction to restrain one from doing "what he is not attempting and does not intend to do". Blease v. Safety Transit Co., 4 Cir., 50 F. 2d 852.

For the reasons stated, the order of the Board will be reversed and set aside and the motion to enforce will be denied.

Reversed.

5769 In United States Circuit Court of Appeals, Fourth Circuit

No. 4616

VIRGINIA ELECTRIC AND POWER COMPANY, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition for Review of Order of the National Labor Relations Board

Decree

Filed and Entered November 12, 1940

This cause came on to be heard upon the petition of the Virginia Electric and Power Company to review and set aside a certain order issued by the National Labor Relations Board on the 27th day of February 1940, in proceedings before said Board numbered C-914, C-915, and C-916, entitled "In the Matter of Virginia Electric & Power Company and Transport Workers

Union of America," "In the Matter of Virginia Electric & Power Company and Amalgamated Association of Street, Electrical Railway and Motor Coach Employees of America, an unincorporated association," and "In the Matter of Virginia Electric & Power Company and International Brotherhood of Electrical Workers"; upon the answer of said Board and request for enforcement, and upon the transcript of record in said proceedings certified and filed in this Court; and the said cause was argued by counsel.

On consideration whereof, it is ordered, adjudged, and decreed this 12th day of November 1940, by the United States Circuit Court of Appeals for the Fourth Circuit, that the said order of the National Labor Relations Board be, and the same is
5770 hereby, reversed and set aside, and the petition to enforce be, and the same is hereby, denied.

JOHN J. PARKER,
Senior Circuit Judge.
MORRIS A. SOPER,
U. S. Circuit Judge.
ARMISTEAD M. DOBIE,
U. S. Circuit Judge.

On another day, to wit, December 13, 1940, the mandate of this Court, in this cause, is issued and transmitted to the Secretary of the National Labor Relations Board, at Washington, D. C., in due form.

5771 United States Circuit Court of Appeals, Fourth Circuit

No. 4652

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition for Review of Order of the National Labor Relations Board

Decree

Filed and Entered November 12, 1940

This cause came on to be heard upon the petition of The Independent Organization of Employees of the Virginia Electric and Power Company to review and set aside a certain order issued by

the National Labor Relations Board on the 27th day of February 1940, in proceedings before said Board numbered C-914, C-915, and C-916, entitled "In the Matter of Virginia Electric & Power Company and Transport Workers Union of America," "In the Matter of Virginia Electric & Power Company and Amalgamated Association of Street, Electrical Railway, and Motor Coach Employees of America, an unincorporated association," and "In the Matter of Virginia Electric & Power Company and International Brotherhood of Electrical Workers"; upon the answer of said Board, and upon the transcript of record in said proceedings certified and filed in this Court; and the said cause was argued by counsel.

On consideration whereof, it is ordered, adjudged, and decreed this 12th day of November 1940, by the United States Circuit Court of Appeals for the Fourth Circuit, that the said order of the National Labor Relations Board be, and the same is hereby, reversed and set aside.

JOHN J. PARKER,
Senior Circuit Judge.
MORRIS A. SOPER,
U. S. Circuit Judge,
ARMISTEAD M. DOBIE,
U. S. Circuit Judge

5772 On another day, to wit, December 13, 1940, the mandate of this Court, in this cause, is issued and transmitted to the Secretary of the National Labor Relations Board, Washington, D. C., in due form.

5773 [Clerk's certificate to foregoing transcript omitted in printing.]

5774 In the Supreme Court of the United States

Stipulation as to record

Filed Feb. 12, 1941

Subject to this Court's approval, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that for the purposes of the petition for a writ of certiorari, the printed record may consist of the following:

1. The printed volumes filed in the United States Circuit Court of Appeals for the Fourth Circuit entitled:

a. "Appendix to Brief for Petitioner, Vol. I."
b. "Appendix to Brief for Petitioner, Vol. II."
c. "Appendix to the Board's brief."
d. "Petitioner's Reply Appendix."

2. The supplemental proceedings before the United States Circuit Court of Appeals for the Fourth Circuit.

5775 It is further stipulated and agreed that petitioner will cause the Clerk of the United States Circuit Court of Appeals for the Fourth Circuit to file with the Clerk of the Supreme Court the entire transcript of record certified and filed by the Board in said Circuit Court of Appeals, and that, in the event that the petition for writ of certiorari be granted, the printed record shall consist of the proceedings in the court below, and such portions of the entire transcript of record as certified by the Board to the Court below as the respective parties may designate.

FRANCIS BIDDLE,
Solicitor General of the United States.

Dated at Washington, D. C., this 11th day of January 1941.

T. JUSTIN MOORE,
GEORGE D. GIBSON,
Attorneys for Virginia Electric and Power Company.

Dated at Richmond, Virginia, this 14th day of January 1941.

WM. EARLE WHITE,
Attorneys for The Independent Organization of Employees of the Virginia Electric and Power Company.

Dated at Petersburg, Virginia, this 18th day of January 1941.

5776 Supreme Court of the United States

No. 25, October Term, 1941

Order allowing certiorari

Filed March 31, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

5777 Supreme Court of the United States

No. 26, October Term, 1941

Order allowing certiorari

Filed March 31, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

5778 In Supreme Court of the United States

Stipulation as to record

Filed July 25, 1941

Subject to the court's approval, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the record upon which this case shall be heard shall consist of the following:

1. The following portions of certified transcript of record before the Board heretofore transmitted to this Court by the clerk of the court below:

a. Charge and amended charge filed by the International Brotherhood of Electrical Workers on April 1 and April 13, 1938; charge filed by Amalgamated Association of Street Rail-
5779 way and Motor Coach Employees on February 23, 1938; charge and amended charge filed by the Transport Workers Union of America on July 20 and August 26, 1937; order of consolidation dated April 13, 1938; the Board's complaint and notice of hearing; respondent's answer; motion of Independent Organization of Employees of the Virginia Electric and Power Company to intervene; letter granting leave to intervene; all of the foregoing documents are found in Bd. Exh. 1.

b. Amended charge filed by Amalgamated Association of Street, Electric Railway, and Motor Coach Employees (Bd. Exh. 15).

c. Motion to amend (Bd. Exh. 12-A).

d. Amended answer of company (Bd. Exh. 15-B).

e. The testimony printed in the appendices to the company's brief in the court below (Vol. I, Vol. II, Reply appendix) and the appendix to the Board's brief in the court below.

f. The following additional portions of the testimony:

Beginning with transcript—		To and including transcript—	
Page	Line	Page	Line
*5	15	6a	18
*6d	13	6d	21
*28	1	30	20
*32	17	32	25
*103	17	104	1
119	23	120	1
	7	186	23
189	22	190	7
190	11	192	21
268	1	268	25

Beginning with transcript—		To and including transcript—	
Page	Line	Page	Line
274	12	274	19
325	1	326	2
371	14	372	9
*421	18	426	10
483	1	485	15
492	11	493	19
499	14	502	16
597	19	598	12
600	1	600	6
690	3	691	9
*771	23	772	12
773	10	774	16
775	14	775	24
776	5	777	15
778	13	779	14
798	24	800	6
849	8	852	6
866	10	867	19
905	15	908	20
909	19	910	13
949	19	950	9
965	14	968	2
1002	10	1003	3
1011	7	1015	19
1078	10	1083	18
1087	15	1089	1
1141	15	1141	19
1208	25	1209	15
1219	14	1223	14
1231	25	1232	22
1253	9	1256	9
1294	15	1295	8
1387	5	1394	5
1398	1	1402	17
1404	8	1407	15
1450	12	1450	24
1453	8	1454	18
*1541	4	1541	11
*1544	2	1546	7
*1608	13	1609	21
1629	22	1631	10
*1631	11	1634	18
*1651	13	1652	9
1894 (include 2nd p. 1894)	19	1895	1
1897	23	1899	25
1909	1	1910	7
1942	20	1942	25
1943	1	1943	14
1944	21	1954	17
2004	1	2005	1
2007	12	2009	8
2018	21	2019	15
2040	8	2041	25
2104	17	2105	5
2156	15	2156	24
2174	7	2175	15
2200	20	2201	10
2213	5	2215	5
2238	9	2241	15
2256	15	2257	12

Beginning with transcript—		To and including transcript—	
Page	Line	Page	Line
2299	1	2299	9
2332	23	2333	16
2360	14	2360	23
2381	19	2382	6
2546	10	2547	9
2579	7	2586	3
2588	13	2590	6
2593	17	2593	25
2639	3	2645	20
2689	9	2690	18
2722	9	2725	20
2731	19	2731	25
2879	21	2880	4
2920	7	2921	25
3116	8	3116	21
3187	11	3187	17
3193	11	3193	20
3212	16	3213	16
3264	4	3265	3
3268	1	3268	25
3269	6	3271	19
3281	23	3283	16
3295	16	3295	26
3308	1	3308	6
3310	16	3310	20
3330	2	3330	24
3332	19	3333	15
3340	13	3340	15
3368	17	3369	18
3380	19	3381	6
3383	7	3383	19
3410	3	3410	19
3514	5	3514	24
3518	4	3519	8
3521	18	3522	23
3609	21	3610	10
*3721	2	3721	9
3791	1	3798	18
3822	19	3824	8
3855	25	3857	3
3857	18	3857	22
3879	14	3880	13
3959	1	3959	8
3981	5	3981	24
*3995	21	3997	2
4001	24	4002	13
4005	21	4006	18
4039	17	4044	8
4054	6	4054	18
4063	22	4064	24
4075	19	4076	18
4089	21	4090	12
4176	25	4177	4
*4180	8	4180	20
4231	4	4231	18
4249	20	4252	17
4275	12	4276	24
4343	13	4343	15
4366	17	4371	11
*4434	16	4435	10

Beginning with transcript—		To and including transcript—	
Page	Line	Page	Line
4450	9	4451	24
4452	7	4452	9
4472	18	4472	20
4501	24	4502	25
4503	1	4503	3
4509	4	4510	9
4526	25	4531	16
4537	8	4537	25
4538	5	4538	22
4570	24	4571	18
4643	9	4645	14
4653	17	4654	9
4711	10	4711	17
*4820	7	4820	17
4857	6	4857	17
4894	13	4894	15
4902	17	4903	13
4910	6	4913	10
4926	21	4927	12
4929	2	4930	25
*4931	23	4932	2
4976	5	4980	2
4986	8	4988	1
5012	15	5013	18
5064	9	5065	1
5067	9	5067	25
5116	5	5119	8
5131	22	5133	12
5236	20	5236	24
5279	10	5279	25
5283	17	5285	8
5376	5	5379	5
5389	15	5392	15
5393	6	5394	20

g. The following exhibits introduced into evidence before the Board:

Board's Exhibits:	Respondent's Exhibits:	Intervenor's Exhibits:
4	7	3A–G
5	9	4
6	11 (Extracts listed below only*)	6
7	13	7
7A	14 (Through page 8 only)	8
9	20B	9
19	22	10
20	24B–D	15
26	25G	16A–F
33	26	17
36	27	19A–S
39	28	20A–B
40A–B	35	22
41	36	23
51	46	24
53		28–42 inc.

*Only the following extracts from Resp. Exh. 11 are to be printed:

Norfolk Virginian Pilot.—Issue of 5-28-37, in full; issue of 5-29-37, excluding picture; issue of 6-2-37, in full; issue of 6-9-37, in full; issue of 6-7-13, last 6 paragraphs.

Norfolk Ledger Dispatch.—Issue of 6-11-37, in full; issue of 6-16-37, 1st, 3rd, 5th, and 6th paragraphs (down to part starting "Crum told").

Richmond Times Dispatch.—Issue of 6-24-37, 6th, 7th, 8th, 9th, and 10th paragraphs.

2. The decision and order of the Board.

3. The proceedings in the court below, consisting of the petitions for review filed by the company and the Independent Organization, the answers thereto of the Board, the opinion and decrees of the court below.

4. The stipulation entered into in this court upon the Board's petition for writs of certiorari.

5. This stipulation.

It is further stipulated and agreed that Intervenor's Exhibit 25 and 26 are lists of persons voting in the Independent Organization primary on July 2 and the election on July 12 at Norfolk and Richmond; that 1912 persons are listed as having voted in the primary; that 1885 persons are listed as having voted in the election.

It is further stipulated and agreed that, if it should become necessary, additional portions of the certified transcript of record before the Board may be designated to be printed by any of the parties hereto, and upon being printed, such additional portions shall be deemed part of the record herein.

CHARLES FAHY,
Acting Solicitor General of the United States.

Dated at Washington, D. C., this 24th day of July 1941.

HUNTON, WILLIAMS, ANDERSON, GAY, & MOORE,
Attorneys for Virginia Electric and Power Company.

Dated at Richmond, Virginia, this 22nd day of July 1941.

WHITE, TEMPLE, HAMILTON & WYCHE,
Attorney for the Independent Organization of Employees of the Virginia Electric and Power Company.

Dated at Petersburg, Virginia, this 22nd day of July 1941.

[Endorsement on cover:] File No. 45107, 45108. U. S. Circuit Court of Appeals, Fourth Circuit. Term No. 25. National Labor

Relations Board, Petitioner vs. Virginia Electric and Power Company. Term No. 26. National Labor Relations Board, Petitioner vs. The Independent Organization of Employees of the Virginia Electric and Power Company. Petition for writs of certiorari and exhibit thereto. Filed February 12, 1941. Term No. 25, O. T. 1941, 26, O. T. 1941.

U. S. GOVERNMENT PRINTING OFFICE: 1941

Nos. —, —.

In the Supreme Court of the United States

OCTOBER TERM, 1940

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

VIRGINIA ELECTRIC AND POWER COMPANY

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

INDEX

	Page
Opinions below	2
Jurisdiction	2
Questions presented	3
Statute involved	5
Statement	5
Reasons for granting the writ	16
Conclusion	28
Appendix	30

CITATIONS

Cases:

Atlas Underwear Co. v. *National Labor Relations Board*, decided January 15, 1941 (C. C. A. 6)	20
Bethlehem Shipbuilding Corp. v. *National Labor Relations Board*, 114 F. (2d) 930 (C. C. A. 1)	19
Continental Oil Co. v. *National Labor Relations Board*, 113 F. (2d) 473 (C. C. A. 10) certiorari granted limited to another point, No. 413, this Term	20
E. I. du Pont de Nemours & Co. v. *National Labor Relations Board*, decided December 27, 1940 (C. C. A. 4)	18
L. Greif & Bro. v. *National Labor Relations Board*, 108 F. (2d) 551 (C. C. A. 4)	18
H. J. Heinz Co. v. *National Labor Relations Board*, No. 73, this Term, decided January 6, 1941	25
International Association of Machinists v. *National Labor Relations Board*, 311 U. S. 72	27
Kansas City Power & Light Co. v. *National Labor Relations Board*, 111 F. (2d) 340 (C. C. A. 8)	20, 27
Magnolia Petroleum Co. v. *National Labor Relations Board*, 115 F. (2d) 1007 (C. C. A. 10)	20
National Labor Relations Board v. *American Manufacturing Co.* 106 F. (2d) 61 (C. C. A. 2), modified and affirmed, 309 U. S. 629	19
National Labor Relations Board v. *Bradford Dyeing Ass'n*, 310 U. S. 318	24
National Labor Relations Board v. *Brown Paper Mill Co.*, 108 F. (2d) 867 (C. C. A. 5), certiorari denied, 310 U. S. 651	20
National Labor Relations Board v. *Falk Corp.*, 308 U. S. 453	24
National Labor Relations Board v. *Fansteel Metallurgical Corp.*, 306 U. S. 240	24
National Labor Relations Board v. *H. E. Fletcher Co.*, 108 F. (2d) 459 (C. C. A. 1), certiorari denied, 309 U. S. 678	19

291130—41——1

Cases—Continued. Page

National Labor Relations Board v. *Greenebaum Tanning Co.*, 110 F. (2d) 984 (C. C. A. 7), certiorari denied, No. 152 this Term 27

National Labor Relations Board v. *Link-Belt Co.*, Nos. 235, 236, this Term, decided January 6, 1941 ..... 18, 19, 25

National Labor Relations Board v. *Mathieson Alkali Works, Inc.*, 114 F. (2d) 796 (C. C. A. 4) 18, 23

National Labor Relations Board v. *National Motor Bearing Co.*, 105 F. (2d) 652 (C. C. A. 9) 20

National Labor Relations Board v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241 24

National Labor Relations Board v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272 24

National Labor Relations Board v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261 ..... 24, 27

National Labor Relations Board v. *Rath Packing Co.*, 115 F. (2d) 217 (C. C. A. 8) 20

National Labor Relations Board v. *Swift & Co.*, 116 F. (2d) 143 (C. C. A. 8) 20

National Labor Relations Board v. *West Kentucky Coal Co.*, decided November 15, 1940 (C. C. A. 6) 28

National Licorice Co. v. *National Labor Relations Board*, 309 U. S. 350 24

Oughton v. *National Labor Relations Board*, decided November 19, 1940 (C. C. A. 3) 26

Republic Steel Corp. v. *National Labor Relations Board*, 311 U. S. 7 15

A. E. Staley Mfg. Co. v. *National Labor Relations Board*, decided November 14, 1940 (C. C. A. 7) 27

Titan Metal Mfg. Co. v. *National Labor Relations Board*, 106 F. (2d) 254 (C. C. A. 3), certiorari denied, 308 U. S. 615 19

Western Union Telegraph Co. v. *National Labor Relations Board*, 113 F. (2d) 992 (C. C. A. 2) 19, 27-28

Westinghouse Electric & Manufacturing Co. v. *National Labor Relations Board*, 112 F. (2d) 657 (C. C. A. 2) 19

Statute:

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Supp. V, Sec. 151, *et seq.*):

Sec. 7 30

Sec. 8 (1) 30

Sec. 8 (2) 30

Sec. 8 (3) 30

Sec. 10 (a) 31

Sec. 10 (c) 31

Sec. 10 (e) 31

Miscellaneous:

House Report No. 1147, 74th Cong., 1st Sess. 24

Senate Report No. 573, 74th Cong., 1st Sess. 24

In the Supreme Court of the United States

OCTOBER TERM, 1940

NOS. —, —.

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

VIRGINIA ELECTRIC AND POWER COMPANY

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that writs of certiorari issue to review the decrees of the United States Circuit Court of Appeals for the Fourth Circuit entered on November 12, 1940, setting aside and refusing to enforce an order issued by the Board against the Virginia Electric and Power Company (Pro. 37).[1]

---

[1] The decrees ~~was~~ were entered ~~jointly~~ in two distinct proceedings for review of the Board's order instituted, respectively,

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (Pro. 23–36) is reported in 115 F. (2d) 414. The findings of fact, conclusions of law, and order of the Board (P. A. I, 1–45) are reported in 20 N. L. R. B., No. 87.[2]

JURISDICTION

The decree of the Circuit Court of Appeals was entered on November 12, 1940 (Pro. 37). The

---

by the Virginia Electric and Power Company and the Independent Organization of Employees of the Virginia Electric and Power Company, a labor organization found by the Board to be company dominated. In its answer to the petition of the company the Board requested enforcement of its order.

Pursuant to a stipulation of the parties (Pro. 38–39) the record for purposes of the petition for writs of certiorari consists of four volumes. The first and second volumes contain the portions of the record printed in two volumes by Virginia Electric and Power Company as an appendix to its brief in the Circuit Court of Appeals. These are referred to herein as (P. A. I) and (P. A. II), respectively. The third volume of the record consists of the portions of the testimony and exhibits printed by the Board as an appendix to its brief in the court below, referred to herein as (B. A.), and of the appendix to the company's reply brief in the court below, which is not referred to herein. The fourth volume of the record contains the proceedings in the Circuit Court of Appeals and is referred to herein as (Pro.). A certified copy of the transcript of the entire record of the proceeding before the Board has been filed with the Clerk. The typewritten transcript of evidence is referred to herein as (Tr.).

[2] This is a pamphlet copy of the decision and order issued in advance of the bound volume. It is available in the library of this Court.

jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. The company, with a long-established policy of opposition toward "outside" labor unions, posted a notice in April 1937 which stated that the employees might be approached by representatives of national labor unions, linked "strikes and unrest" with such unions, praised the labor relations existing during the period when the employees were not represented by any labor organization, and urged the advantages of individual bargaining. Shortly thereafter the company called a meeting of its employees at which the president of the company read a message urging the employees to form a labor organization with which the company might bargain; the message plainly implied, although it did not expressly state, that an "inside" union was desired by the management. This message resulted in the organization, with the obvious approval of the management, of such a union. The questions presented are whether the National Labor Relations Board could validly find that the company violated Section 8 (2) and (1) of the National Labor Relations Act with respect to the labor organization so formed, and that the

posting of the notice constituted a violation of the Act.[3]

2. Whether anti-union threats and surveillance of union meetings by a supervisory employee having power to assign work and discipline employees afford sufficient basis for an order by the Board requiring the employer to cease and desist from such practices.

3. Whether, upon findings that an employer has interfered with, dominated, and supported a labor organization of its employees, has entered into an agreement with that organization providing for a closed shop and a check-off of union dues, and pursuant to that agreement has deducted various sums of money from the wages of its employees and has paid those sums over to the labor organization, the

[3] The Company entered into a closed-shop contract with the labor organization in question, and pursuant to that contract discharged two of its employees who refused to join the organization. If the Board's finding that the company violated Section 8 (2) with respect to the organization is valid, it is plain that the closed-shop contract was invalid, and that, as the Board found, the two discharges were in violation of Section 8 (3). Hence, if the Court grants this petition the Board will ask that its order with respect to these two employees be enforced.

The Board also found that two other employees were discharged for union membership or activities. The court below set aside these findings as unsupported by evidence (Pro. 34–35). Since the evidence on this issue bears upon the question whether the company violated Section 8 (2) with respect to the inside organization, we will also ask the Court, if this petition is granted, to review the sufficiency of the evidence as to these two employees.

Board may require, as affirmative action appropriate to effectuate the policies of the Act, that the employer reimburse the employees for the amounts thus deducted from their wages.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix.

STATEMENT

Upon the usual proceedings the Board issued its findings of fact, conclusions of law, and order. Omitting jurisdictional findings, the facts, as found by the Board and as shown by the evidence, may be summarized as follows:[4]

During 1922 the Virginia Electric and Power Company, hereafter called the Company, which operates electric, gas, and transportation utilities in eastern Virginia and northeastern North Carolina, broke a strike called by the Amalgamated Association of Street, Electrical, and Motor Coach Employees of America, an affiliate of the American Federation of Labor (P. A. I, 12; P. A. I, 362–364).[5] Shortly after enactment of the National Industrial Recovery Act, Section 7 (a) of which guaranteed

[4] In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

[5] From 1922 to 1937 the Company's employees were not represented by any labor organization (Bd. Exh. 3, pp. 6–7, *infra*).

to employees freedom of self-organization and the right to select their own collective bargaining representatives, President Holtzclaw of the Company informed the employees in a speech that the management believed that "organization of our employees for any purpose * * * is entirely unnecessary" (P. A. 1, 12; P. A. I, 467–468, Resp. Exh. 36). Until May 1937 the Company implemented its antiunion policy through the use of a full-time labor spy furnished by the Railway Audit and Inspection Company (P. A. I, 14n; B. A. 3–5, 21–23, 27–28). During 1936 E. L. Bishop, superintendent of the transportation division at Norfolk, interrogated a number of employees concerning rumored organizational activity (P. A. I, 13; P. A. I, 438–439, B. A. 10–11, 51–52).[6]

In March or April 1937, the A. F. of L. initiated efforts to organize the Company's employees (P. A. I, 12–13; P. A. I, 469–471, P. A. II, 896). On April 26, 1937, the Company posted on bulletin boards throughout its enterprise the following notice (P. A. I, 15–16; Bd. Exh. 3, P. A. I. 52):

> TO EMPLOYEES OF THE COMPANY:
>
> As a result of recent national labor organization activities and the interpretation of the Wagner Labor Act by the Supreme Court, employees of companies such as ours may be approached in the near future by repre-

[6] It was to Bishop that the undercover operative referred to above reported on labor matters (P. A. I. 437–438).

sentatives of one or more such labor organizations to solicit their membership. Such campaigns are now being pressed in various industries and in different parts of the country and strikes and unrest have developed in many localities. For the last fifteen years this Company and its employees have enjoyed a happy relationship of mutual confidence and understanding with each other, and during this period there has not been any labor organization among our employees in any department, so far as the management is aware. Under these circumstances, we feel that our employees are entitled to know certain facts and have a statement as to the Company's attitude with reference to this matter.

The Company recognizes the right of every employee to join any union that he may wish to join, and such membership will not affect his position with the Company. On the other hand, we feel that it should be made equally clear to each employee that it is not at all necessary for him to join any labor organization despite anything he may be told to the contrary. Certainly there is no law which requires or is intended to compel you to pay dues to, or to join any organization.

This Company has always dealt with its employees in full recognition of the right of every individual employee, or group of employees, to deal directly with the Company with respect to matters affecting their inter-

> ests. If any of you, individually or as a group, at any time have any matter which you wish to discuss with us, any officer or department head will be glad, as they always have been, to meet with you and discuss them frankly and fully. It is our earnest desire to straighten out in a friendly manner, as we have done in the past, whatever questions you may have in mind. It is reasonable to believe that our interests are mutual and can best be promoted through confidence and cooperation.
>
> (Signed) J. G. HOLTZCLAW,
> *President.*

The Board found that this notice was an appeal to the employees to bargain with the Company directly, without the intervention of any "outside" union (P. A. I, 17). Several groups of the employees responded to this plea by submitting demands for increased wages and improved working conditions (P. A. I, 17; P. A. 56–58). In the middle of May the Transport Workers Union, an affiliate of the C. I .O., started to organize the Norfolk transportation employees (P. A. I, 13; P. A. I. 128–129, 177–180, 238–239). About the same time supervisors throughout the system instructed the employees under them to select representatives to attend meetings at which a Company official would speak; the employees complied (P. A. I, 17; P. A. I, 53–56, 260–262, 345–347, P. A. II, 613–614, 881). Two meetings were held simultaneously on May 24 in the company's office buildings in Rich-

mond and Norfolk; President Holtzclaw addressed the Richmond meeting and Vice President R. J. Throckmorton spoke to the employees at Norfolk (P. A. I, 17–18; P. A. I, 89–90, 412–413). Each official read an identical message to the assembled delegates.[7] The message was as follows (P. A. I, 18–19; P. A. I, 53, Bd. Exh. 4):

> A substantial number of its employees representing various departments and various occupations have approached the Company with the request that the Company consider with them the matter of their working conditions and wages. In other words, they have requested collective bargaining. The Company's position with respect to this was recently stated in a posted bulletin.
>
> In a Company such as ours, if an individual operator for example should ask for himself better working conditions or wages, this Company could not comply with his request without also making the same concessions to other similar operators. In such a case the operator who appealed individually would, as a practical matter, be bargaining collectively for all of his group, which is not the logical procedure.
>
> This Company is willing to consider the requests mentioned above but feels that in

[7] There is testimony that Holtzclaw prefaced his reading of the message by referring to strikes and disorders throughout the country and by stating that he wanted the employees to know how the Company felt about union activities (P. A. I, 90–91, 109).

fairness to all of its employees and to itself, it should at the same time consider other groups who have not yet come to it. If the approaching negotiations are to be intelligent and fair to all properly concerned, they should be conducted in an orderly way and all interested groups should be represented in these discussions by representatives of their own choosing as provided in the Wagner National Labor Relations Act, which provides as follows: [quoting Section 7 of the Act].

The Wagner Act applies only to employees whose work is in or directly affects interstate commerce and to companies engaged in interstate commerce. Counsel for this Company advise us that in their opinion the provisions of the Act do not apply to local transportation employees, to gas employees in Norfolk, or to certain strictly local employees of the light and power department. In spite of this, the Company wants to make it perfectly clear that its policy is one of willingness to bargain with its employees in any manner satisactory to the majority of its employees and that no employee will be discriminated against because of any labor affiliations he desires to make.

The petitions and representations already received indicate a desire on the part of these employees at least to do their own bargaining, and we are taking this means of

> letting you know our willingness to proceed with such bargaining in an orderly manner. In order to progress, it would seem that the first step necessary to be taken by you is the formation of a bargaining agency and the selection of authorized representatives to conduct this barganing in such an orderly manner.
>
> The Wagner Labor Act prohibits a company from "dominating or interfering with the formation or administration of any labor organization or contributing financial or other support to it."
>
> In view of your requests to bargain directly with the Company and in view of your right to self-organization as provided in the law, it will facilitate negotiations if you will proceed to set up your organization, select your own officers and supervisors, adopt your own by-laws and rules, and select your representatives to meet with the company officials whenever you desire.

At the Richmond meeting Holtzclaw announced that any increase in wages arrived at by collective bargaining would become effective as of June 1 (P. A. I, 19; P. A. I, 74–75, 479). Both Holtzclaw and Throckmorton told the assembled representatives that they could remain in the auditoriums for further discussion of the matters raised in the message (P. A. I, 20; P. A. I, 63, 301, 367, B. A. 29). The representatives did so (P. A. I, 20; P. A. II, 657–658, 840–841, 892–893, B. A. 46–47).

The Board concluded that at the May 24 meeting the Company "urged its employees to organize and to do so independently of 'outside' assistance * * *" and gave the initial impetus to formation of a system-wide labor organization[8] (P. A. I, 20–21).

During the days immediately following delivery of the Company's message, meetings of the employees were held upon company premises in the various departments (P. A. I, 21; P. A. II, 659–661, 819, 833–834, 882–883, 896–897, 908–909).[9] At

---

[8] The message read on May 24 (*supra*, pp. 9–11) stated that "all interested groups should be represented" in the discussions with the company, "that the first step to be taken by you is the formation of a bargaining agency," and that "it will facilitate negotiations if you will proceed to set up your organization, select your own officers and supervisors, adopt your own bylaws and rules, and select your representatives to meet with the company officials whenever you desire." That Holtzclaw contemplated only a system-wide organization is indicated by his testimony that he promised the wage increase for June 1 because to get 3,500 employees "of one mind as to what sort of a bargaining agency they wanted" might be a long drawn out process (P. A. I, 479–480; see P. A. I, 364–366). The national labor organizations confined their organizational campaigns to specific portions of the Company's wide-flung organization: the A. F. of L. appeared at Richmond, the Transport Workers Union and the Amalgamated among the transportation employees at Norfolk, and the International Brotherhood of Electrical Workers among the employees in the electrical division at Norfolk (P. A. I, 12, 13; P. A. I, 178, 211–212, 470–471, 498–499).

[9] Notices of these meetings were posted on the company's bulletin boards with the Company's permission (P. A. II, 897, Tr. 4676, 4743) and superintendents of various plants and

these meetings the Company's message was reported to the employees and it was determined to form an inside organization; representatives were selected and thereafter convened on company property at Richmond, Norfolk, and Petersburg on June 1, 3, 7, 9, 11, and 14 to accomplish this purpose (P. A. I, 21–22, 25; P. A. I, 120; P. A. II, 770, 823–824, 946, 1003–1008, 1035–1043, B. A. 41–42). On June 15 the constitution and bylaws of the Independent Organization of Employees of the Virginia Electric and Power Company, hereafter called the Independent, were adopted by the representatives (P. A. I, 22; P. A. II, 771–772, 1026–1033).

During the crucial period between May 24 and June 15 the Company took other action calculated to cause the employees to follow the path it had pointed out to them. Edwards, a supervisor in the Norfolk transportation division, maintained surveillance of meetings of the Transport Workers Union and warned employees that they would keep "messing with the C. I. O." until they lost their jobs (P. A. I, 13–14; P. A. I, 129–130, 177–180, 237–238; B. A. 10, 13–15, 16–18). Everard Mann, an employee who openly protested against an "inside union" at a meeting of employees, and pro-

---

departments cooperated with the organizers in providing meeting places and arranging for the employees to be present (P. A. I, 21; P. A. II, 764, 893–894, 897–899, B. A. 39–40, 41, 48–49). Many employees left their work to attend these meetings (P. A. II, 862–863, 893–894, 898–899, B. A. 46, 47, 49).

posed that the employees join a national organization, was discharged by Superintendent Bishop on June 1; the Board found that Mann's discharge violated Sections 8 (3) and (1) of the Act (P. A. I, 27–29; P. A. I, 157–158, 161–162, 395, 417, 419, 430–433; B. A. 14).

After adoption of the Independent's constitution and bylaws, application cards were distributed, signed, and collected throughout the Company's entire system, many of them on company time and property (P. A. I, 23; P. A. I, 174, 204; P. A. II, 774–775; B. A. 8–9, 19, 20). On July 19 the Independent claimed to represent a majority of the employees and on August 5 a contract was concluded between the Company and the Independent providing, *inter alia*, for a closed shop, the check-off of Independent dues, and a wage increase (P. A. I, 23–24; Bd. Exh. 9, P. A. II, 923–943). On August 20 the Company paid $3,784.50 to the Independent pursuant to the check-off provision, although the Company had not yet deducted this entire amount from the employees' wages (P. A. I, 24; Bd. Exh. 53, P. A. II, 992). Thereafter the Company notified all employees that they must join the Independent to retain their jobs (P. A. I, 24–25; P. A. II, 991–992); A. F. Staunton and Robert E. Elliott, Jr., refused to do so and were discharged (P. A. I, 29–33; P. A. I, 189, 192, 283, P. A. II, 590–591).

Upon these findings, the Board concluded that the Company had dominated and interfered with the formation and administration of the Independent in violation of Section 8 (2) and (1) of the Act (P. A. I, 26–27); that by posting the April 26 bulletin, as well as through the activities of Superintendent Bishop and Edwards, the Company had interfered with its employees in the exercise of their right of self-organization, thus violating Section 8 (1) of the Act (P. A. I, 14, 17), and that by discharging Mann, Staunton, Elliott, and T. N. Harrell, Jr.,[10] the Company had violated Section 8 (3) and (1) of the Act (P. A. I, 29, 30, 32, 35). The Board ordered the Company to cease and desist from these unfair labor practices and from giving effect to its contract with the Independent, to withdraw all recognition from and completely disestablish the Independent as a representative of any of its employees, to reinstate with back pay the four employees who were discriminatorily discharged,[11]

[10] Harrell, an extremely active member of the International Brotherhood of Electrical Workers who made no secret of his opposition to an "inside" organization and criticized the Independent, was discharged in March 1938, under circumstances which, in the Board's opinion, proved that his activity on behalf of the International Brotherhood was the cause (P. A. I, 33–35; P. A. I, 211–212, 227–228).

[11] The back-pay provisions of the Board's order contain a "work relief" provision which is invalid under the decision of this Court in *Republic Steel Corp.* v. *National Labor Relations Board*, 311 U. S. 7. We do not, of course, ask

to reimburse each of its employees who was a member of the Independent in the amount of dues and assessments checked off his wages by the Company on behalf of that organization, and to post appropriate notices (P. A. I, 41–45).

Thereafter, the Company and the Independent filed separate petitions in the court below to review and set aside the Board's order (Pro. 1–16). The Board answered and petitioned for full enforcement of its order against the Company (Pro. 18–22). On November 12, 1940, the court handed down its opinion and entered a decree denying enforcement to any part of the Board's order and setting aside the entire order (Pro. 23–37).

REASONS FOR GRANTING THE WRIT

1. The basis upon which the court below denied enforcement to and set aside the Board's order with respect to the Independent presents, we believe, a question of general importance in the administration of the National Labor Relations Act. The court below did not deny finality to the Board's subsidiary findings of fact with respect to the origin of the Independent,[12] but set aside the Board's

---

review of the decree below in so far as they denied enforcement to this provision of the order.

[12] Thus the court agreed with the Board that the Company had been hostile to "outside" unions (Pro. 25); that Superintendent Bishop had interrogated employees concerning union organization, in violation of the Act (Pro. 25, 35–36); that the Company tried to discourage organization

order because it deemed the facts found by the Board insufficient, as a matter of law, to spell out the domination, interference, or support which Section 8 (2) and (1) of the Act proscribe. The gist of the court's decision, we believe, is to be found in its statement that—

> If the company desired an inside, as opposed to an outside union, it did not say so; and the fact that the employees may have gathered that impression from past dealings with the company cannot supply the element of domination or interference which the Act proscribes. Cf. *L. Greif & Bro.* v. *N. L. R. B.*, 4 Cir., 108 F. (2d) 551. (Pro. 31–32).

---

of its employees after enactment of the National Industrial Recovery Act (Pro. 26); that the bulletin of April 26 and the message of May 24 "led to organizational activities on the part of the employees" (Pro. 25); that the Company assembled the employees on May 24 "and explained to them its desire for collective bargaining" (Pro. 31); that the purpose of the Company's message was to point out to the employees "the desirability of their choosing agents for the purpose of collective bargaining" (Pro. 27); that the Independent "came into being as a result of the May 24th meetings" (Pro. 30); that the Independent "was set up as a bargaining agency within a few weeks of the May 24th meeting" (Pro. 32); that "meetings of the employees looking to organization of the [Independent] were held on the Company's premises, that its bulletin boards were used for posting notices of these meetings and its telephone line between Richmond and Norfolk were used in connection therewith" (Pro. 30); and that the wage increase forecast by President Holtzclaw at the Richmond meeting on May 24 "doubtless did expedite the process" (Pro. 32).

This principle has been applied by the court below in four successive decisions, including the present one, in each of which the court set aside orders of the Board based upon findings that conditions fairly attributable to the employer canalized the employees' choice in the direction of a particular labor organization. *L. Greif & Bro.* v. *National Labor Relations Board,* 108 F. (2d) 551 (C. C. A. 4); *National Labor Relations Board* v. *Mathieson Alkali Works, Inc.,* 114 F. (2d) 796 (C. C. A. 4); *E. I. du Pont de Nemours & Co.* v. *National Labor Relations Board,* decided December 27, 1940 (C. C. A. 4). In none of those cases did the employer expressly announce that he wished the employees to form an inside labor organization but in each, we think, the facts found by the Board and accepted by the court warranted a conclusion that the employer had created circumstances which rendered difficult, if not impossible, the choice of any representative other than the one favored by him. The repeated failure of the court below to realize that there are more subtle, but equally effective, means whereby an employer may obtain adherence by his employees to a particular labor organization than through a bald announcement that that is what he desires (cf. *National Labor Relations Board* v. *Link-Belt Co.,* Nos. 235, 236, this Term, decided January 6, 1941), places the protection of the rights of self-organization and collective bargaining through enforcement of Section 8 (2) of the Act in substantial jeopardy within the Fourth Judicial Circuit.

The decision below is plainly inconsistent with principles laid down by this Court in passing upon employer activities found by the Board to constitute violations of Section 8 (2) of the Act. The industrial espionage, discriminatory discharges, and anti-union statements held by this Court to evidence employer hostility toward "outside" unions in *National Labor Relations Board* v. *Link-Belt Co.*, Nos. 235, 236, this Term, decided January 6, 1941, all find their counterparts here (*supra*, pp. 6–8); indeed, the Company's hostility toward "outside" organizations was recognized by the court below (note 12, pp. 16–17, *supra*). Such hostility is plainly one of the "conditions or circumstances which the employer created or for which he was fairly responsible and as a result of which it may reasonably be inferred that the employees did not have that complete and unfettered freedom of choice which the Act contemplates." *Link Belt* case, *supra*.[13] Yet the court below did not permit

[13] See, also, *Bethlehem Shipbuilding Corp.* v. *National Labor Relations Board*, 114 F. (2d) 930, 938 (C. C. A. 1); *National Labor Relations Board* v. *H. E. Fletcher Co.*, 108 F. (2d) 459, 466 (C. C. A. 1), certiorari denied, 309 U. S. 678; *National Labor Relations Board* v. *American Manufacturing Co.*, 106 F. (2d) 61, 68 (C. C. A. 2), modified and affirmed, 309 U. S. 629; *Western Union Telegraph Co.* v. *National Labor Relations Board*, 113 F. (2d) 992, 996 (C. C. A. 2); *Westinghouse Electric & Manufacturing Co.* v. *National Labor Relations Board*, 112 F. (2d) 657, 660 (C. C. A. 2), certiorari granted, No. 447, this Term; *Titan Metal Mfg. Co.* v. *National Labor Relations Board*, 106 F. (2d) 254, 257 (C. C. A. 3), certiorari denied, 308 U. S. 615;

the Board to accord any weight to the setting in which the Company's actions, expressly and admittedly undertaken to bring about the selection of a bargaining representative, occurred.

Even, however, on the test laid down by the court below, that the employer must have put into words his desire for an inside union (*supra*, p. 17), the Board's order should have been enforced. At the unprecedented meeting of employee delegates called by the Company for the express purpose of bringing about the selection of a bargaining representative, high officials of the Company read a message urging the delegates to undertake "the formation of a bargaining agency * * * [to] select your own officers and supervisors, adopt your own bylaws and rules, and select your representatives * * *" (*supra*, p. 11). The finding of the Circuit Court of Appeals (Pro. 31) that this did not

---

National Labor Relations Board v. *Brown Paper Mill Co.*, 108 F. (2d) 867, 870 (C. C. A. 5), certiorari denied, 310 U. S. 651; *Atlas Underwear Co.* v. *National Labor Relations Board*, decided January 15, 1941 (C. C. A. 6); *National Labor Relations Board* v. *Rath Packing Co.*, 115 F. (2d) 217, 219–220 (C. C. A. 8); *Kansas City Power & Light Co.* v. *National Labor Relations Board*, 111 F. (2d) 340, 346–347 (C. C. A. 8); *National Labor Relations Board* v. *Swift & Co.*, 116 F. (2d) 143 (C. C. A. 8); *National Labor Relations Board* v. *National Motor Bearing Co.*, 105 F. (2d) 652, 658 (C. C. A. 9); *Continental Oil Co* v. *National Labor Relations Board*, 113 F. (2d) 473, 481 (C. C. A. 10), certiorari granted limited to another point, No. 413, this Term; *Magnolia Petroleum Co.* v. *National Labor Relations Board*, 115 F. (2d) 1007, 1010, 1012 (C. C. A. 10).

indicate that the employees should form an independent organization does violence to the language: the words plainly meant a new organization, not one of those already engaged in organizing the plant."[14] Further, the words cannot be removed from their setting. The employees could not possibly have understood that the Company, in initiating selection by them of a bargaining representative, intended that they be genuinely free to select whatever organization they wished. The Company was concededly and openly hostile to national labor organizations. It had implemented that policy by espionage, surveillance, interrogation as to union activities, and direct threats to its employees. It had met the decisions of this Court upholding the Act and the ensuing organizing efforts of national labor organizations with a notice to the employees (*supra*, pp. 6–8) linking such organizations with "strikes and unrest" and emphasizing the "happy relationship" that had existed for the last fifteen years, during which "there has not been any labor organization among our employees in any department, so far as the management is aware." There is testimony that a high official of the Company, Superintendent Bishop, had urged the Norfolk transportation employees to form an "inside" organization through which, he said, they could accomplish

[14] In addition, none of the "outside" unions was organizing on the system-wide basis which the Company indicated as the basis for future bargaining (note 8, p. 12, *supra*).

more than through an "outside" union because the Company would not recognize a representative of the latter type (B. A. 7–8, 10, B. A. 11–12, 18–19, 29–31, P. A. I, 113). Under such circumstances, the meaning of the message, clear from the words themselves (*supra*, pp. 20–21), must have been utterly unmistakable to the employees. There is testimony that they understood that the Company wanted an inside union (B. A. 8, 34–35).

The patent indications that the Company favored an "inside" union and wanted the employees to form one, were multiplied during the Independent's organizational period and were effective in obtaining employee support for the new organization. Liberal use of company property and facilities was made by the organizers (*supra*, pp. 12–13); supervisors cooperated in arranging the organization meetings and for attendance by the employees during working hours (note 9, p. 12, *supra*), and the Company, with alacrity, promised to furnish the organizers with a list of all employees (B. A. 54–57). President Holtzclaw's promise with respect to a wage increase (*supra*, p. 11) was used as an argument in favor of forming the Independent (P. A. I, 111–112, B. A. 8, 48). Widespread solicitation of members on company time and property ensued without let or hindrance (*supra*, p. 14).[15] In the midst of the campaign Mann, the

[15] In March 1937 an A. F. of L. organizer sought to organize the employees of the Company's power plant in

most outspoken opponent of "inside" unions, was discharged (*supra*, pp. 13–14)[15] and Supervisor Edwards threatened employees with discharge if they continued "messing with the C. I. O." (*supra*, p. 13). These potent forms of support led to their natural and predetermined conclusion: the Independent enlisted a majority of the employees and, as part of a now familiar pattern, the Company promptly entered into a contract with the Independent containing closed-shop and check-off provisions, terms which are almost invariably opposed by employers who are hostile to truly independent labor organizations.

Norfolk: President Holtzclaw issued instructions that his organizing activities could not be pursued either on company time or on company property (P. A. I, 377–378, 404, 470).

[15] In setting aside the Board's findings as to Mann without discussion of the evidence, the Circuit Court of Appeals stated in its opinion that "It is hardly probable that he would have been discharged for union affiliation or activity when the company was proceeding so carefully to avoid the appearance of evil" (Pro. 34). Compare the similar inference indulged by the court in *National Labor Relations Board* v. *Mathieson Alkali Works, Inc.*, 114 F. (2d) 796, 803 (C. C. A. 4) as a basis for setting aside the Board's order: "Respondent was certainly outwardly assuming a position of neutrality and was forbidding its supervisory employees to interfere with the right of self-organization on the part of the workers. It was advised from the beginning by able counsel. If it had sought to engage in secret interference, it certainly would not have resorted to the bungling acts on the part of the foremen which the evidence discloses." Apparently with the court below crudity and subtlety alike give rise to an inference unfavorable to the Board's findings.

If these facts, which were found by the Board and, for the most part, accepted by the Circuit Court of Appeals (note 12, pp. 16–17, *supra*), do not spell out the interference and support which Section 8 (2) proscribes, a broad avenue is opened for employers to take the initiative in forming labor organizations acceptable to them and to bring to bear upon the employees' exercise of their right of self-organization the full weight of the employer's superior economic power. The means adopted by the Company in the present case were so readily effective to achieve the results which they were plainly intended to produce, that legalization of those means under principles which appear to be settled in the court below (*supra*, p 18) would materially endanger the clear Congressional purpose,[17] effectuated by repeated decisions of this Court,[18] to remove the company union from its dominant position as a means of denying to employees freedom

[17] Senate Report No. 573, 74th Cong., 1st Sess., pp. 10–11; House Report No. 1147, 74th Cong., 1st Sess., pp. 17–19.

[18] *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261; *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272; *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240; *National Labor Relations Board* v. *Newport News Co.*, 308 U. S. 241. *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453; *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350; *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U. S.

of choice in the selection of their bargaining representatives. The question presented, we submit, is one of public importance.

2. The Circuit Court of Appeals held that, despite the admitted supervisory status of Edwards, which included a power to assign work and discipline employees (Tr. 789–790), his surveillance of union meetings and threats that employees would be discharged if they continued "messing with the C. I. O." (*supra*, p. 13) did not constitute unfair labor practices by the Company because they were "contrary to the policy of the company and were clearly nothing more than the utterance of his individual views" (Pro. 35). This important holding was based upon the principles laid down by the same court in the *Mathieson Alkali* case, *supra*, that to justify a cease and desist order it must be shown that coercive activities by supervisory employees were engaged in with the authorization or approval of the employer. The holding is contrary to the decisions of this Court in *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 79–81; *H. J. Heinz Co.* v. *National Labor Relations Board*, No. 73, this Term, decided January 6, 1941; and *National Labor Relations Board* v. *Link-Belt Co.*, Nos. 235, 236, this Term,

318; *National Labor Relations Board* v. *Link-Belt Co.*, Nos. 235, 236, this Term, decided January 6, 1941; *H. J. Heinz Co.* v. *National Labor Relations Board*, No. 73, this Term, decided January 6, 1941.

decided January 6, 1941, and is in conflict with numerous decisions of the Circuit Court of Appeals.[19]

3. The Board's order in the present case contains a provision requiring the Company to reimburse each employee in an amount equal to the dues and assessments checked off his wages by the Company and paid over to the Independent. A like form of relief has been ordered by the Board since June 1938 in all cases in which it has found a violation of Section 8 (2) of the Act, and in which there was a check-off agreement between the employer and the dominated union. The validity of this provision presents, we submit, a question of importance in the administration of the National Labor Relations Act.

In the present case, in the Board's view, the employer established in its plant a company union which became the employees' representative by reason of employer sponsorship, not because they freely chose it. The employer then buttressed the position of its nominee by concluding a closed-shop contract which illegally forced the employees to acquiesce in the management's selection of representatives, and assured the organization's financial stability by instituting a check-off. Under these

[19] See the cases collected in our brief in the *Machinists* case, pp. 32–37, and *Oughton* v. *National Labor Relations Board*, decided November 19, 1940 (C. C. A. 3).

circumstances, the moneys paid over to the Independent by petitioner constituted a forced tribute levied upon the employees for maintenance of the very instrument whereby the Company foreclosed any genuine exercise of the rights of self-organization and collective bargaining. We submit that the provision requiring reimbursement to the employees of dues and assessments checked off their wages by the Company was plainly not an abuse of the Board's "judgment and discretion * * * in choosing the particular affirmative relief to be ordered." *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265, 271; *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 82.

The provision in question was set aside as not authorized by the Act, although the Board's findings of company interference, domination and support were approved and other portions of the Board's order based upon such findings were enforced, in *Kansas City Power & Light Co.* v. *National Labor Relations Board*, 111 F. (2d) 340, 348 (C. C. A. 8); *National Labor Relations Board* v. *Greenebaum Tanning Co.*, 110 F. (2d) 984, 988–989 (C. C. A. 7), certiorari denied, No. 152, this Term; *A. E. Staley Mfg. Co.* v. *National Labor Relations Board*, decided November 14, 1940 (C. C. A. 7); *Western Union Telegraph Co.* v. *National Labor*

Relations Board, 113 F. (2d) 992, 997–998 (C. C. A. 2); and *National Labor Relations Board* v. *West Kentucky Coal Co.,* decided November 15, 1940 (C. C. A. 6). The result of those decisions is that an employer who chooses to establish and maintain an illegal labor organization as a means of forestalling genuine self-organization until such time as the Board can issue an order and the courts enforce it, is free to foist the cost of maintenance upon the employees, without fear that he may be required to refund that cost to them in addition to ceasing his illegal conduct.

CONCLUSION

The decision of the court below with respect to what conduct by employers constitutes interference with and support of a labor organization, departs from the principles laid down by this Court and widely followed by the other Circuit Courts of Appeals. In this respect the decision, which is one of a series of similar decisions by the court below, raises a question of public importance concerning enforcement of the National Labor Relations Act in the Fourth Judicial Circuit. In addition, the court's ruling as to the employer's responsibility for the activities of a supervisory employee are contrary to decisions of this Court. Finally, the question concerning the validity of the provision requiring reimbursement of the employees for

money checked off their wages in payment of dues to the company union, is of importance in the administration of the Act. For these reasons, we submit that this petition for writs of certiorari should be granted.

FRANCIS BIDDLE,
Solicitor General.

ROBERT B. WATTS,
General Counsel,
National Labor Relations Board.

FEBRUARY 1941.

APPENDIX

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449 29 U. S. C., Supp. V, Sec. 151, *et seq.*):

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712),

as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

* * * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

U. S. GOVERNMENT PRINTING OFFICE 1941

FILE COPY

Office - Supreme Court, U. S.
FILED
OCT 31
CHARLES ELMORE CROPLEY
CLERK

Nos. 25, 26

In the Supreme Court of the United States

OCTOBER TERM, 1941

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

VIRGINIA ELECTRIC AND POWER COMPANY

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

INDEX

	Page.
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
Specification of errors to be urged	8
Summary of argument	8
Argument:	
I. The findings of the Board relating to the Independent are supported by substantial evidence, and the order based thereon was proper:	
A. The Board's findings of fact are supported by substantial evidence	12
B. On these facts the Board properly concluded that the company dominated, interfered with, and supported the Independent, and in this way and others interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in section 7 of the Act, thereby violating section 8 (1) and (2)	28
C. The order requiring the company to disestablish the Independent, and to reimburse employees for Independent dues deducted by the company from their wages, is valid	42
II. There is substantial evidence supporting the Board's findings that the company discriminated against certain of its employees in violation of section 8 (3) and (1) of the Act	49
Conclusion	58
Appendix	60

CITATIONS

Cases:	
Agwilines, Inc. v. *National Labor Relations Board*, 87 F. (2d) 146	11, 47
American Enka Corp. v. *National Labor Relations Board*, 119 F. (2d) 60	32
Ansin Shoe Mfg. Co., Matter of, 1 N. L. R. B. 929	39
Clinton Cotton Mills, Matter of, 1 N. L. R. B. 97	39
Corning Glass Works v. *National Labor Relations Board*, 118 F. (2d) 625	53

Cases—Continued. Page.

Hamilton-Brown Shoe Co. v. *National Labor Relations Board*, 104 F. (2d) 49 ..... 40, 53
Heinz Co., H. J., v. *National Labor Relations Board*, 110 F. (2d) 843, affirmed, 311 U. S. 514 ..... 37, 38, 42
Heller Bros. Co. of Newcomerstown, Matter of, 7 N. L. R. B. 646 39
Highway Trailer Co., Matter of, 3 N. L. R. B. 591 39
International Association of Machinists v. *National Labor Relations Board*, 311 U. S. 72 ..... 10, 33, 36, 37, 38, 41, 43, 44, 48, 53
Jensen Radio Mfg. Co., Matter of, 27 N. L. R. B. No. 144 39
Kansas City Power & Light Co. v. *National Labor Relations Board*, 111 F. (2d) 340 ..... 43, 51
Lone Star Bag and Bagging Co., Matter of, 8 N. L. R. B. 244 39
National Labor Relations Board v. *American Potash & Chemical Corp.*, 98 F. (2d) 488, certiorari denied, 306 U. S. 643 ..... 35, 36
National Labor Relations Board v. *Blossom Products Corp.*, 121 F. (2d) 260 ..... 32, 40, 44
National Labor Relations Board v. *Bradford Dyeing Assn.*, 310 U. S. 318 ..... 10, 36, 42, 50
National Labor Relations Board v. *Continental Oil Co.*, 121 F. (2d) 120 43
National Labor Relations Board v. *Ed. Friedrich, Inc.*, 116 F. (2d) 888 40
National Labor Relations Board v. *Elkland Leather Co.*, 114 F. (2d) 221, certiorari denied, 311 U. S. 705 31
National Labor Relations Board v. *Fansteel Metallurgical Corp.*, 306 U. S. 240 ..... 10, 42
National Labor Relations Board v. *J. Greenebaum Tanning Co.*, 110 F. (2d) 984, certiorari denied, 311 U. S. 662 ..... 40, 43, 53
National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1 4
National Labor Relations Board v. *Link-Belt Co.*, 311 U. S. 584 ..... 10, 29, 33, 35, 36, 37, 38, 41, 42, 48, 50, 51, 52, 58
National Labor Relations Board v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333 58
National Labor Relations Board v. *National Motor Bearing Co.*, 105 F. (2d) 652 53
National Labor Relations Board v. *Newport News Shipbuilding and Dry Dock Co.*, 308 U. S. 241 42
National Labor Relations Board v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261 ..... 42, 48
National Labor Relations Board v. *Remington Rand, Inc.*, 94 F. (2d) 862, certiorari denied, 304 U. S. 576 ..... 11, 46
National Labor Relations Board v. *Waterman Steamship Corp.*, 309 U. S. 206 58
National Labor Relations Board v. *West Kentucky Coal Co.*, 116 F. (2d) 816 ..... 40, 43

Cases—Continued. Page.
National Licorice Co. v. *National Labor Relations Board*, 309 U. S. 350 42
Oughton v. *National Labor Relations Board*, 118 F. (2d) 486, pending on petition for certiorari, No. 98, this Term 38
Phelps Dodge Corp. v. *National Labor Relations Board*, 313 U. S. 177 ..... 11, 46, 58
Republic Steel Corp. v. *National Labor Relations Board*, 311 U. S. 7 ..... 7, 11, 47
Southern Bell Telephone & Telegraph Co., Matter of, 35 N. L. R. B. No. 137 48
Staley, A. E., Mfg. Co. v. *National Labor Relations Board*, 117 F. (2d) 868 43
Stehli & Co., Inc., Matter of, 35 N. L. R. B. No. 12 48
Swayne & Hoyt, Ltd. v. *United States*, 300 U. S. 297 58
Swift & Co. v. *National Labor Relations Board*, 106 F. (2d) 87 38
System Federation No. 40 v. *Virginian Ry. Co.*, 11 F. Supp. 621, affirmed, 84 F. (2d) 641, affirmed, 300 U. S. 515 31
Texas & New Orleans R. Co. v. *Brotherhood of Railway Clerks*, 281 U. S. 548 ..... 51, 58
Titan Metal Mfg. Co., Matter of, 5 N. L. R. B. 577, enforced, 106 F. (2d) 254, certiorari denied, 308 U. S. 615 39
Valley Mould and Iron Corp. v. *National Labor Relations Board*, 116 F. (2d) 760, certiorari denied, No. 313 U. S. 590 31
Warehousemen's Union v. *National Labor Relations Board*, 121 F. (2d) 84, certiorari denied October 27, 1941, Nos. 627, 628, this Term 53
Western Union Telegraph Co. v. *National Labor Relations Board*, 113 F. (2d) 992 43
Westinghouse Electric & Mfg. Co. v. *National Labor Relations Board*, 312 U. S. 660, affirming per curiam, 112 F. (2d) 657 42

Miscellaneous:
Brooks, Robert R. R., *When Labor Organizes* (1937), pp. 18–19 39
National Industrial Conference Board, *Studies in Personnel Policy, No. 12, The Closed Shop* (March 1939), p. 11 39
Rosenfarb, Joseph, *The National Labor Policy* (1940), pp. 256–257 38

Statute:
National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C., Supp. V, Sec. 151, *et seq.*):
Sec. 7 60
Sec. 8 60
Sec. 10 61

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 25

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

VIRGINIA ELECTRIC AND POWER COMPANY

No. 26

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 1005–1019) is reported in 115 F. (2d) 414. The findings of fact, conclusions of law, and order of the Board (R. 952–980) are reported in 20 N. L. R. B. 911.

JURISDICTION

The decrees of the circuit court of appeals were entered on November 12, 1940 (R. 1019–1021).[1] The petition for writs of certiorari was filed on February 12, 1941, and was granted on March 31, 1941 (R. 1022–1023). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether there is substantial evidence to support findings of the Board that the Virginia Electric and Power Company dominated, interfered with, and supported a labor organization of its employees, and that the company discriminatorily discharged four of its employees in violation of the Act.

2. Whether, upon findings that the company has dominated, interfered with, and supported a labor organization of its employees, and has entered into an agreement with that organization providing for a closed shop and a check-off of union dues, and

---

[1] The decrees were entered in two distinct proceedings for review of the Board's order, instituted, respectively, by the Virginia Electric and Power Company and The Independent Organization of Employees of the Virginia Electric and Power Company, a labor organization found by the Board to be company-dominated (R. 981–996, 1000–1004). In its answer to the petition of the company, the Board requested enforcement of its order (R. 996–1000).

pursuant to that agreement has deducted various sums of money from the wages of its employees and has paid those sums over to the labor organization, the Board may require, as affirmative action appropriate to effectuate the policies of the Act, that the company reimburse the employees for the amounts thus deducted from their wages.

3. Whether the company is responsible under the National Labor Relations Act for anti-union threats and surveillance of union meetings by a supervisory employee having power to assign work and discipline employees.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the appendix, *infra*, pp. 60–62.

STATEMENT

Upon the usual proceedings had pursuant to section 10 of the National Labor Relations Act, the Board issued its findings of fact, conclusions of law, and order (R. 952–980). The evidence relating to the unfair labor practices is detailed under the Argument (*infra*, pp. 12–28). Omitting jurisdictional findings, concerning which no question is here raised, the findings of the Board may be summarized briefly as follows:

For years prior to the events of this case, the Virginia Electric and Power Company, hereinafter called the company, had pursued a policy of op-

position to labor organizations.[2] Shortly after the enactment of the National Industrial Recovery Act in 1933, the president of the company made a speech to the employees denouncing organization among the employees as "entirely unnecessary"; in 1936 employees were interrogated concerning union activities; in 1937, employees were warned against participating in C. I. O. activities and their meetings were kept under surveillance; and the company utilized a labor spy until his death in 1937 (R. 959–960). On April 26, 1937, shortly after this Court had upheld the constitutionality of the National Labor Relations Act [3] and the A. F. of L. had begun efforts to organize the company's employees, the company posted on bulletin boards throughout its operations an appeal to the employees to bargain with the company directly, without the intervention of an "outside" union (R. 961–962, 964). When, in response to this bulletin, several groups of the company's employees submitted demands for better wages and working conditions, the company directed its employees to select representatives to attend meetings at which company officials would speak. The rep-

[2] In 1922, upon the refusal of the company to renew the terms of an agreement between it and a nationally affiliated union, that union called a strike among the company's employees; the strike was unsuccessful (R. 959). For 15 years thereafter, there was no labor organization among the employees (R. 959, 961).

[3] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, and companion cases, decided April 12, 1937.

resentatives were chosen, and on May 24 were assembled and addressed by high company officials who spoke of the desirability of forming a bargaining agency. In substance these speeches urged the employees to organize independently of "outside" assistance. By the speeches and through the method of calling and holding the meetings, the company gave impetus to and assured the creation of an "inside" organization. (R. 962–965, 967.)

After these addresses, meetings were held among the company's employees, often with the cooperation of supervisory employees; at the meetings the May 24 speeches were reported to the men who immediately voted to form an inside organization (R. 965, 967). These meetings were held on the premises of the company; subsequently the organizing committees also used company property and company facilities (R. 965–966, 967–968). By June 15 the committees had adopted the constitution of the Independent Organization of Employees of the Virginia Electric and Power Company (hereinafter called the Independent) (R. 966, 968).

While formation and organization of the Independent was proceeding, a company supervisor maintained surveillance over meetings of a competing C. I. O. union, and warned employees that participation in the C. I. O. would cause their discharge (R. 960). On June 1, an employee, Mann, who had openly protested against an inside union and advocated affiliation with a national labor or-

ganization, was discriminatorily discharged in violation of section 8 (3) and (1) of the Act (R. 969–970).

After adoption of the Independent's constitution, application cards were distributed throughout the company's system and many were signed during working hours (R. 966, 968). On July 19, the Independent notified the company that it represented a majority of the employees, and submitted a proposed contract. Negotiations were begun on July 30 and agreement was quickly reached; on August 5, the contract was formally executed. (R. 966–967.) The contract provided, *inter alia*, for a closed shop, check-off, and wage increase (R. 967). On August 20, pursuant to the check-off provision, the company paid $3,784.50 to the Independent, although it had not yet deducted the entire amount from the employees' wages (R. 967). On November 4, the date upon which the closed-shop provision became effective, the company discharged two employees, Staunton and Elliott, because they had refused to join the Independent (R. 970–973). In March 1938 it also discharged another employee, Harrell, a member of the Independent, because of his membership and activity in an outside union (R. 973–974).*

* The closed-shop provision permitted the employees to be members of other labor organizations (R. 878).

Upon the basis of these findings and the entire record in the proceeding, the Board concluded that the company had violated the prohibitions of section 8 (1), (2), and (3) of the Act (R. 977–978). Its order directed the company to cease and desist from its unfair labor practices and from giving effect to its contract with the Independent, to withdraw recognition from and disestablish that organization, to reinstate with back pay the four employees discharged, to reimburse each of its employees who was a member of the Independent in the amount of dues and assessments checked off his wages by the company on behalf of the Independent, and to post appropriate notices (R. 978–980).

Thereafter the company and the Independent filed separate petitions in the court below to review and set aside the Board's order (R. 981–996, 1000–1004). The Board answered, requesting enforcement of its order against the company (R. 996–1000, 1004–1005). On November 12, 1940, the court handed down its opinion and entered decrees denying enforcement to any part of the Board's order and completely setting it aside (R. 1005–1021).[5] On March 31, 1941, this Court granted the petition for writs of certiorari (R. 1022–1023).

---

[5] The back-pay provisions of the Board's order provided also for reimbursement of governmental relief agencies. The Board has not sought review of the decrees insofar as they deny enforcement to the latter requirement. *Republic Steel Corp.* v. *National Labor Relations Board*, 311 U. S. 7.

SPECIFICATION OF ERRORS TO BE URGED

The circuit court of appeals erred:

1. In holding that the following findings of the Board are unsupported by substantial evidence:

(a) That the company dominated and interfered with the formation and administration of the Independent and contributed support to that organization;

(b) That the company discriminatorily discharged Mann, Staunton, Elliott, and Harrell;

(c) That in these and other respects the company interfered with, restrained, and coerced its employees in the exercise of their rights to self-organization.

2. In holding that the company was not responsible for the anti-union activities of Edwards, a supervisory employee.

3. In refusing to enforce and in setting aside the Board's order in its entirety, other than by eliminating the provisions for reimbursement of governmental relief agencies.

SUMMARY OF ARGUMENT

I

A. The Board's findings that the company dominated and interfered with the formation and administration of the Independent and contributed support to it in violation of section 8 (2) of the Act, and that the company, in this and other respects, interfered with, restrained and coerced its

employees in violation of section 8 (1) of the Act are supported by substantial evidence.

In broad outline the evidence shows: For many years prior to 1937 the company opposed the organization of its employees by labor unions. The company issued an announcement that self-organization was "entirely unnecessary"; it employed a labor spy; and it interrogated employees concerning union matters. In April 1937, after this Court had upheld the Act and the A. F. of L. had begun an organization campaign, the company posted a system-wide bulletin attacking "national" labor unions and appealing to the employees to deal directly with the company. In May 1937, the company called a meeting of representatives of the employees at which high company officials read a message urging the employees to "set up" a bargaining agency, to "select your own" officers and adviser, and to "adopt your own" bylaws and rules, and suggested that a wage increase might result from bargaining with such an agency if formed. The employee representatives reported the company proposal to their constituents at meetings held, with supervisory approval, on company time and property. The representatives thereafter repeatedly met on company property to establish the Independent, an "inside" organization. While the Independent was being formed, the company discharged, upon what was transparently a pretext, the employee who was most outspoken in op-

posing an "inside" union and in advocating affiliation with a national union; a supervisor also kept "outside" union meetings under surveillance, and warned employees interested therein that they would be discharged. Widespread solicitation of membership in the Independent followed on company time and property. After the successful conclusion of the membership drive, the company promptly entered into an agreement with the Independent providing, *inter alia*, for a wage increase, closed shop, and check-off of dues.

B. The evidence thus outlined supports the Board's ultimate findings that the company dominated, interfered with, and supported the Independent, and warrants the Board's order requiring the company to cease and desist therefrom and to disestablish the Independent. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584; *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72; *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318; *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240.

C. The Board's order requiring the company to reimburse the employees for the Independent dues deducted from their wages by the company and paid over to the Independent is likewise warranted in the circumstances of this case. The company's closed-shop contract with the Independent unlawfully compelled all employees to be members of the Independent under penalty of discharge; the con-

stitution and bylaws of the Independent and the check-off agreement required that each Independent member assent to the deduction of dues by the company under pain of forfeiting his membership and hence his employment. These deductions were thus in no sense voluntary payments by the employees but constituted a forced tribute levied on them to maintain the company-dominated union. The employees suffered a loss in wages equal to the amount of the deductions. The loss should be borne by the company which caused it, rather than by the employees who were its victims. The Board's order effectuates the policies of the Act by restoring "the situation, as nearly as possible, to that which would have obtained but for the" company's unfair practices. *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 194; *Republic Steel Corp.* v. *National Labor Relations Board*, 311 U. S. 7; *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2), certiorari denied, 304 U. S. 576; *Agwilines, Inc.*, v. *National Labor Relations Board*, 87 F. (2d) 146 (C. C. A. 5).

II

The Board's findings that the company, in violation of section 8 (3) and (1) of the Act, discharged Mann and Harrell because of their union membership and activity, and discharged Staunton and Elliott because they refused to join the Independent, are supported by substantial evidence.

ARGUMENT

I

THE FINDINGS OF THE BOARD RELATING TO THE INDEPENDENT ARE SUPPORTED BY SUBSTANTIAL EVIDENCE, AND THE ORDER BASED THEREON WAS PROPER

A. The Board's findings of fact are supported by substantial evidence

The Board found that the company had dominated and interfered with the formation and administration of the Independent and contributed support to it in violation of section 8 (1) and (2) of the Act (R. 967–969, 978). The court below accepted most of the critical subsidiary findings of fact upon which the Board rested its ultimate conclusion. It agreed with the Board that the company had been hostile to outside unions (R. 1008); that, in violation of the Act, Superintendent Bishop had interrogated employees concerning union organization and activities (R. 1008, 1018–1019); that the company's bulletin of April 26 and its message of May 24 "led to organizational activities on the part of the employees" (R. 1008); that the meeting of May 24 was called by the company in order to impress upon the employees the company's belief in "the desirability of their choosing agents for the purpose of collective bargaining" (R. 1009); that the Independent "came into being as a result of the May 24th meeting" (R. 1012–1013); and that "meetings of em-

ployees looking to the organization of the [Independent] were held on the company's premises, that its bulletin boards were used for posting notices of these meetings and its telephone between Richmond and Norfolk used in connection therewith, and that persons were solicited for membership in the [Independent] on the company's premises" (R. 1013). The court below, however, expressly rejected the Board's secondary findings and inferences relating to the April 26th notice (R. 1008–1009), the May 24th meeting (R. 1013–1015), the use of company premises and facilities (R. 1015–1016), and the progress and result of negotiations which began on July 30 (R. 1012). It minimized the significance of other findings and made findings of its own (R. 1008–1009, 1011, 1012, 1015). It concluded, therefore, that the Independent was the product of "free and untrammeled action of the employees and constitutes a bona fide bargaining agency for them, free of company domination or interference" (R. 1008).

We submit that the court was in error and that the Board's ultimate findings of domination, interference, and support were warranted, as the following review will demonstrate.

The company's hostility to self-organization.—The antecedent labor record of the company fully justifies the observation of the court below that "Prior to 1937, the attitude of the company had

not been favorable to labor organization" (R. 1008). From 1922 to 1937, the company's employees were unorganized (Bd. Exh. 3, R. 34–35). In 1933, the passage of section 7 (a) of the National Industrial Recovery Act, guaranteeing freedom of self-organization to employees, was promptly followed by a statement to the employees issued by the company's president, Holtzclaw,[6] announcing the company's view that "organization of our employees for any purpose * * * is entirely unnecessary" (R. 426–427, Resp. Exh. 36, R. 886). At the hearing, Holtzclaw admitted that "there never was any modification made" in this company policy (R. 428). The policy, moreover, was supplemented by active anti-union measures. From 1933 until his death in May 1937, the company employed through the Railway Audit and Inspection Bureau, a professional undercover operative who reported on labor matters directly to Division Superintendent Bishop (R. 56–59, 331–333, 370, 399–400, 402, 198–201). Upon learning of incipient union activity in 1936, Bishop himself undertook to add to this operative's information by systematically questioning a group of the company's employees concerning their

[6] Holtzclaw continued as president of the company throughout the period in question, and had plenary authority to deal with the company's labor problems (R. 30).

knowledge of and participation in this activity (R. 93, 400, 820–821).[7]

Against this background, the critical events in controversy occurred.

Events leading to the inception of the Independent: the notice of April 26, 1937, and the meetings of May 24, 1937.—Just as in 1933 and 1936 the possibility of self-organization had stimulated the company to take counter-steps (*supra*, pp. 11–15), so in 1937 local and national events calling attention to unionization found prompt company response. In March or April 1937, the A. F. of L. again initiated efforts to organize the company's employees (R. 428–429, 193)[8]; on April 12 this Court upheld the Act. The decision of this Court concededly "gave no intimation to [Holtzclaw's] mind of any change in the company's policy toward labor relations whatever" (R. 429–430), and on April 26 the company posted the follow-

[7] The lower court concurred (R. 1008, 1018–1019) in the Board's finding (R. 960) that Bishop's conduct violated section 8 (1) of the Act, but nevertheless held that this violation did not justify the issuance of a cease and desist order (R. 1019).

[8] In March 1937 an A. F. of L. organizer, Parker, telephoned a company superintendent, Davis, to ask for an appointment to discuss organization of a certain group of the employees; Davis immediately advised the company's vice-president of the Norfolk Division, Throckmorton, of the call, and Throckmorton in turn promptly relayed the information to President Holtzclaw (R. 350, 428–429).

ing statement on the bulletin boards throughout its enterprise (Bd. Exh. 3, R. 34–35)[9]:

> *To the Employees of the Company:*
>
> As a result of recent national labor organization activities and the interpretation of the Wagner Labor Act by the Supreme Court, employees of companies such as ours may be approached in the near future by representatives of one or more such labor organizations to solicit their membership. Such campaigns are now being pressed in various industries and in different parts of the country and strikes and unrest have developed in many localities. For the last fifteen years this company and its employees have enjoyed a happy relationship of mutual confidence and understanding with each other, and during this period there has not been any labor organization among our employees in any department, so far as the management is aware. Under these circumstances, we feel that our employees are entitled to know certain facts and have a

[9] Although the company had taken no such action upon the passage of the Act in 1935 (R. 449), the company purportedly felt it necessary to post the notice in 1937 because of "rumors" that the "employees wanted to know their status," and because the company thought it desirable to clarify the Act for the employees (R. 55, 430–431, 449–450). The record is barren of any evidence to show that any employee sought this "legal advice" from the company (cf. R. 634, 770) and, indeed, President Holtzclaw clearly indicated that the advice was unsolicited and was the company's own idea (R. 430–431, 449–450).

statement as to the Company's attitude with reference to this matter.

The company recognizes the right of every employee to join any union that he may wish to join, and such membership will not affect his position with the Company. On the other hand, we feel that it should be made equally clear to each employee that it is not at all necessary for him to join any labor organization, despite anything he may be told to the contrary. Certainly, there is no law which requires or is intended to compel you to pay dues to, or to join any organization.

This Company has always dealt with its employees in full recognition of the right of every individual employee, or group of employees, to deal directly with the Company with respect to matters affecting their interests. If any of you, individually or as a group, at any time, have any matter which you wish to discuss with us, any officer or department head will be glad, as they always have been, to meet with you and discuss them frankly and fully. It is our earnest desire to straighten out in a friendly manner, as we have done in the past, whatever questions you may have in mind. It is reasonable to believe that our interests are mutual and can best be promoted through confidence and cooperation.

(Signed) J. G. HOLTZCLAW,
President.

Holtzclaw admitted that in the notice "We simply wanted to tell our employees again just what we told them in 1933, * * *" (R. 430, cf. *supra*, p. 14). The Board found that this notice constituted "an appeal to the employees to bargain with the [company] directly, without the intervention of any 'outside' union" (R. 962; *infra*, pp. 30–31).

In response to the notice of April 26, requests for increased wages and improved working conditions, including one from a majority of the Norfolk transportation employees, were submitted to the company (R. 37–38, 40–41, 250, 316, 346–347, 463). Holtzclaw, however, declined to deal with these groups (R. 37–38, 463–464). Instead, on May 20, he called a meeting of some 40 superintendents and other officials and instructed them to request the employees to select representatives to attend meetings to be held on a later date at which they would be addressed by Holtzclaw at Richmond, and by another official at Norfolk (R. 37–40, 252–253, 317–318).

Accordingly on May 24, representatives selected by the employees pursuant to this company request attended meetings in the company's office buildings in Richmond and Norfolk (Int. Exhs. 20A, 20B, R. 914–915, 37, 69, 377, 660). After reference to newspaper accounts of strikes and disorders throughout the country, President Holtzclaw, at the meeting in Richmond, read the

following message as a statement of the company's position concerning union activities (Bd. Exh. 4, R. 822–823, 36–37, 69–70, 98):

> A substantial number of its employees representing various departments and various occupations have approached the Company with the request that the Company consider with them the matter of their working conditions and wages. *In other words, they have requested collective bargaining. The Company's position with respect to this was recently stated in a posted bulletin.*
>
> In a company such as ours, if an individual operator, for example, should ask for himself better working conditions or wages, this Company could not comply with his request without also making the same concessions to other similar operators. In such a case the operator who appealed individually would, as a practical matter, be bargaining collectively for all of his group, which is not the logical procedure.
>
> This Company is willing to consider the requests mentioned above but feels that, in fairness to all of its employees and to itself, it should at the same time consider other groups who have not yet come to it. If the approaching negotiations are to be intelligent and fair to all properly concerned, they should be conducted in an orderly way, and all interested groups should be represented in these discussions by representatives of their own choosing,

as provided in the Wagner National Labor Relations Act, which provides as follows:

"SECTION 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

The Wagner Act applies only to employees whose work is in or directly affects interstate commerce and to companies engaged in interstate commerce. Counsel for this Company advise us that in their opinion the provisions of the Act do not apply to local transportation employees, to gas employees in Norfolk, or to certain strictly local employees of the light and power department. In spite of this, the Company wants to make it perfectly clear that its policy is one of willingness to bargain with its employees in any manner satisfactory to the majority of its employees and that no employee will be discriminated against because of any labor affiliations he desires to make.

The petitions and representations already received indicate a desire on the part of these employees at least to do their own bargaining, and we are taking this means of letting you know our willingness to proceed with such bargaining in an orderly manner. *In order to progress, it would seem that the first step necessary to be*

taken by you is the formation of a bargaining agency and the selection of authorized representatives to conduct this bargaining in such an orderly manner.

The Wagner Labor Act prohibits a company from "dominating or interfering with the formation or administration of any labor organization or contributing financial or other support to it."

In view of your requests to bargain directly with the Company, and in view of your right to self-organization as provided in the law, *it will facilitate negotiations if you will proceed to set up your organization, select your own officers and adviser, adopt your own bylaws and rules, and select your representatives to meet with the Company officials whenever you desire.* [Italics supplied.]

Holtzclaw concluded his talk by stating that if a wage increase was agreed upon in future bargaining it would be made effective as of June 1, 1937 (R. 53, 435). In response to questions from the floor, the employees were told that they need join no labor organization, and were refused advice concerning the type of organization they should adopt (R. 44). Holtzclaw and the other company officials then left the auditorium after announcing, as they had prearranged to do (R. 385), that the employees were free to remain there to discuss the matter further (R. 45, 455). The Norfolk meeting was substantially identical to

that at Richmond (R. 256, 284–285, 340–341, 376–377, 385), except that Throckmorton, vice president in charge of the Norfolk Division (R. 32), who presided there, did not mention the possibility of any wage increase (R. 266).[10]

A considerable number of the employee representatives remained at both meetings (R. 586, 790–791, 741–742). At Richmond, after some discussion concerning the formation of an inside organization (R. 793), the representatives elected Holzbach, an employee, "general chairman to push this thing into an organization" (R. 790–791, 928, 745). At Norfolk the representatives decided to meet again on June 1 (R. 667, 678).

Upon the basis of this evidence the Board found that both through the contents of the company speech and the mechanics of the meetings, the company had at the May 24 meetings "urged its employees to organize and to do so independently of 'outside' assistance" (R. 965; *infra*, pp. 32-34).

The formation and organization of the Independent and the execution of the closed-shop and check-off contract.—Immediately following May 24, employee meetings, in the arrangement of which

---

[10] Although the advisability of making the statement respecting a wage increase was considered by Holtzclaw and Throckmorton prior to the meeting, Holtzclaw had not made up his mind at the time Throckmorton left Richmond for Norfolk (R. 284–285, 435, 454–455). Since three Norfolk employees attended the Richmond meeting (R. 98), it is not improbable that the Norfolk employees, too, promptly learned of the possibility of a wage increase as of June 1.

supervisory employees cooperated,[11] were held upon company premises in virtually every department (R. 807–808, 587, 736, 742, 782, 795–796); many employees left their work in order to attend (R. 742–743, 761, 791, 796–798). At these meetings, after the representatives who were present at the speeches of May 24 reported the company's message (*ibid.*), the employees voted to create an unaffiliated organization and elected representatives to bring about its formation (R. 808, 587–588, 665, 727, 743–744, 754, 761–762, 782–783).[12]

On June 1, pursuant to a notification from Holzbach, who had been chosen "general chairman" on May 24, a meeting of representatives of

---

[11] Superintendent of Distribution Crafton (R. 535) arranged to have the Norfolk linemen brought in so that they could hear their representative report to his department (R. 676). Superintendent Davis, of the Reeves Avenue plant in Norfolk, gave permission for the use of the company auditorium on May 27 (R. 727–728). Superintendent of Installation Walke in Richmond permitted the use of the Service Building for meetings of the line department and the engineering group during working hours, and held the linemen in the office so that they could attend (R. 742–743, 791, 797–798).

[12] Many of the employees who had been selected to hear the company's speeches of May 24 were reelected for the purpose of forming the inside organization (R. 109–110, 595, 710–711, 758, Int. Exh. 20A–B, R. 914–915, 660). Fourteen of the seventeen representatives who took part in the June 1 meeting at Richmond (*infra*, pp. 23–24) and seven of the nine Norfolk representatives at the first joint meeting on June 3 at Petersburg (*infra*, p. 24) had been previously designated as representatives to hear the May 24 message (Int. Exhs. 20A, 20B, 33, Bd. Exh. 19, R. 914–915, 929, 839, 660).

departments in the Richmond area was held in the auditorium of the company's service building (Int. Exhs. 32, 33, R. 928–931, 744–745). The assembled representatives constituted themselves a steering committee to form an organization without "outside aid or interference" and designated a committee to consult with a Norfolk committee on selection of a lawyer to draw up a constitution and plan of organization (*ibid.*) Simultaneously, a meeting of representatives of departments in the Norfolk area was held at the company's general office building at Norfolk (Int. Exh. 4, R. 889, 592). On June 3 committees from both Richmond and Norfolk met at the company's office building at Petersburg and appointed representatives to employ an attorney to draft a constitution and bylaws for a system-wide organization (Bd. Exh. 19, R. 839–841, 248, 124–125, 679–680, 697–698, 715).[13] An attorney was retained (R. 756, 766–767, 776) and on June 7, the Norfolk representatives again met in the company's general office building at Norfolk and, like the Richmond representatives, constituted themselves a steering committee for the formation of an unaffiliated system-wide organization (Bd. Exh. 20, R. 841–842, 680).

---

[13] The proposal of one of the committeemen that they "procure counsel that is definitely partial to the general interests of labor" was overruled with the statement "that in Richmond the preference is for a lawyer who is neutral in every possible way" (Bd. Exh. 19, R. 839–840, 248).

The Richmond steering committee, in turn, met on June 9 and discussed the proposed constitution and bylaws prepared by the attorney; at this meeting it was decided that further meetings should not be held on the company's premises (Int. Exh. 35, R. 932–934, 746). The Norfolk committee, however, had no such scruples: In order to consider the proposed constitution and bylaws, it met on June 11 in the company's general office building (Int. Exh. 6, R. 889–890, 680–681, 707–708) and again on June 14 in the company's Reeves Avenue auditorium (Int. Exh. 31, R. 927–928, 723). On June 15 the Richmond and Norfolk steering committees, as well as representatives from other cities in which the company operates, met together off company premises and adopted a constitution and bylaws for the Independent (Bd. Exh. 36, R. 844–855, 247, Int. Exh. 22, R. 915–920, 681, 688–689, 746–747).

The Independent's membership campaign followed, with widespread solicitation on company time and property (R. 155–156, 193, 76–77, 184). Within less than two weeks, a majority of the employees had signed (R. 758, 778–779, 710).

Thereafter the Independent completed its organization by electing representatives to its permanent committees (Int. Exhs. 10, 16, R. 893–898, 605–606, 609, 651–652, 805). On July 19 the Independent submitted to the company a proposed contract embodying demands for a closed shop and the check-off of Independent dues (R. 260,

823–824, 900, 46–47, 611–612). At a bargaining conference with the company held on July 30, the company granted the demand for the check-off;[14] after discussion, the closed-shop request was put over to another session at which it too was granted (R. 297–299, 303–304, 345, Resp. Exh. 14, R. 875–876, 878, 268–269).[15] The company also granted a substantial wage increase retroactive to June 1, as had been promised by President Holtzclaw at the meeting on May 24 (Resp. Exh. 14, R. 878, 838, *supra*, p. 21). The agreement was reduced to writing and signed on August 5 (Resp. Exh. 14, R. 878, 268–269, Bd. Exh. 9, R. 826–839, 53); two weeks later the company anticipated the collection of Independent dues by paying to the Independent $3,784.50, although it had not at that time checked off the entire amount from the employees' wages (Bd. Exh. 53, R. 860, 779–780). On November 4, when the closed-shop provision went into effect, the company discharged two employees, Staunton and Elliott, because they refused to be-

[14] While a proviso was added that an employee might revoke his authorization at any time (R. 876, 299–300, 268–269), the proviso is admittedly meaningless (R. 300) since the company promptly thereafter entered into a closed-shop contract requiring all employees to become members of the Independent and the Independent's constitution and by-laws require its members to authorize the deduction of dues (Bd. Exh. 36, R. 855, 247).

[15] The closed-shop provision, which was to be effective in 90 days, provided that it should not affect the right of employees to join or remain members of other labor organizations (Resp. Exh. 14, R. 878, 268–269).

come members of the Independent (R. 172–173, 181, 267–268).[16]

Throughout the period in which the Independent was organizing, the company's attitude toward this inside organization differed sharply from that which it displayed toward outside unions. We have noted above the frequent meetings on company time, on company property, and with supervisory cooperation, which marked the Independent's genesis (*supra*, pp. 18, 22–25), as well as the extensive solicitation for membership which was conducted on behalf of the Independent on company premises during working hours (*supra*, p. 25); in addition, the Independent's organizers freely availed themselves of other company facilities.[17]

In contrast was the company's hostility to outside organizations. In March 1937, President Holtzclaw issued specific instructions prohibiting an A. F. of L. organizer at Norfolk from recruiting members on the company's premises (R. 428–429); in June 1937, when a C. I. O. union had

[16] The Board found that these discharges violated section 8 (3) and (1) of the Act (*infra*, pp. 52–53).

[17] The organizers used, without charge, the company's local and long distance telephone lines to transact their union business (R. 718–719, 720–721, 723, 762–763, 765–766, 772–773, 775). In addition to the meetings above described, other meetings looking toward organization of an inside union were held by the employees on company premises at Petersburg on June 2 (Int. Exh. 34, R. 931–932, 746, 754–755), and at Norfolk on June 4 and June 9 (R. 680, 718, 112).

begun to organize the Norfolk transportation employees, Edwards, a supervisor under Superintendent Bishop, maintained surveillance over the C. I. O.'s organizational meetings and warned employees that they would be discharged if they kept "messing with the C. I. O." (R. 161–164, 89, 119–120, 152–153, 233–234);[18] and on June 1, Superintendent Bishop discriminatorily discharged a Norfolk employee named Mann, after Mann had vigorously and publicly urged his fellow employees not to form an inside union, but, instead, to affiliate with a national labor organization.[19]

B. On these facts the Board properly concluded that the company dominated, interfered with, and supported the Independent, and in this way and others interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in section 7 of the Act, thereby violating section 8 (1) and (2)

The foregoing facts, which were found by the Board, are clearly supported by substantial evidence. Indeed, many of the evidentiary findings are undisputed, and were accepted by the court below. Upon these facts, the Board's ultimate

---

[18] The court below held that the company was not responsible for Edwards' activities (R. 1018); we dispute this conclusion *infra*, pp. 37–38.

[19] We consider below the evidence supporting the Board's finding (R. 970) that Mann was discharged, in violation of section 8 (3) and (1) of the Act, "as a warning to other employees who might also desire the formation of an outside union" (*infra*, pp. 49–52).

findings (R. 960, 968–969) that the company violated the guarantees of section 7 of the Act and dominated, interfered with, and supported the Independent in contravention of section 8 (1) and (2) of the Act are fully supported since they are based upon reasonable inferences which were within the Board's specialized competence.

As in *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, "The question here is whether the Board was justified in concluding that Independent was not the result of the employees' free choice because the employer had intruded to impair their freedom" (p. 587). The determination of the occurrence of such intrusion "must of necessity be based on the existence of conditions or circumstances which the employer created or for which he was fairly responsible and as a result of which it may reasonably be inferred that the employees did not have that complete and unfettered freedom of choice which the Act contemplates" (p. 588).

The evidence shows that for a long period, the company's position, never modified, was one of outright hostility to free self-organization. It had utilized a labor spy; its supervisors had questioned employees concerning their union activities and affiliations; it had announced that self-organization was "entirely unnecessary" (*supra*, pp. 13–15). When the company's fifteen years of "happy relationship", free from unions, was threatened

by the appearance of an A. F. of L. organizer in March 1937, and, still more seriously, by the Act's being held constitutional by this Court, the company's reaction was prompt. On its own motion, without solicitation from any employees, the company undertook to "explain" to its employees what their rights were under the Act. The "explanation" took the form of the system-wide notices posted on the company's bulletin boards on April 26, 1937, concerning which the Board found (R. 962):

> On its face the bulletin reveals a marked bias against what it calls "national" labor organizations. It * * * implies that "strikes and unrest" are caused by the campaigns of such organizations, and stresses the "happy relationship of mutual confidence and understanding" which characterized the 15 years since its defeat of the Amalgamated in 1922. After brief lip-service to the rights guaranteed by the Act, it emphasizes the negative "right" of its employees to refrain from the exercise of those rights.

The notice was admittedly a repetition of the company's 1933 statement, which had been inspired by the National Recovery Act (*supra*, p. 18). More subtle than the blunt announcement in 1933 that labor organizations were superfluous, the 1937 notice was nevertheless cut from the same cloth. The only reference in the notice to the positive rights under the Act, the statement that the com-

pany "recognizes" the employees' rights to join any union of their choice,[20] was immediately balanced by the emphasis upon the negative "right" to refrain from joining any union and to refrain from paying dues. For the rest, the notice was weighted against labor organizations. Employees were invited to "deal directly" with the company under conditions "as they always have been" and as "in the past." In contrast to this suggested course, organizing efforts of outside unions were pictured as leading to "strikes and unrest" rather than to the "happy relationship" existing in the company during the period when there were no labor organizations. The spectre of compulsion to join unions and to pay dues, a warning not without its irony when viewed in the light of the subsequent conduct of the company (*infra*, pp. 38–39), was raised.

This notice warranted the Board's finding (R. 962) that it was "an appeal to the employees to bargain with the [company] directly, without the intervention of any 'outside' union."[21]

---

[20] Even this "recognition" was, in respect of many of the employees, soon modified from a right into a company-granted privilege, since on May 24, the company announced its counsel's opinion that the Act did not apply to certain groups of its workers (*supra*, p. 20).

[21] Compare the "Sasser statement" in *System Federation No. 40* v. *Virginian Ry. Co.*, 11 F. Supp. 621, 624–625, 633, affirmed, 84 F. (2d) 641 (C. C. A. 4), affirmed, 300 U. S. 515; cf. *National Labor Relations Board* v. *Elkland Leather Co.*, 114 F. (2d) 221, 223, 224 (C. C. A. 3), certiorari denied, 311 U. S. 705; *Valley Mould & Iron Corp.* v. *National Labor Relations Board*, 116 F. (2d) 760, 766

It is in this setting that the subsequent meetings of May 24, which followed in less than a month and which were expressly convened by the company in order to bring about the selection of a bargaining representative (*supra*, pp. 18–21), must be evaluated. For, whatever the form of words addressed by the company to the men on May 24, the employees could not fail to consider and interpret those words in the light of the company's hostility to national labor organizations; against this background the employees could scarcely fail to understand that the company, in initiating selection by them of a bargaining representative, intended that they select only an "inside" organization (cf. R. 71, 100). The court below, indeed, agreed that "the employees may have gathered that impression from past dealings with the company" (R. 1014).

But even the form of words used by the company at the May 24 meetings made clear the company's desire for an inside union. At these meetings, composed of employee delegates selected upon the company's request (*supra*, p. 18) and convened by the company for the express purpose of bringing about the selection of a bargaining representative, high officials of the company read a message

---

(C. C. A. 7), certiorari denied, 313 U. S. 590; *American Enka Corp.* v. *National Labor Relations Board*, 119 F. (2d) 60, 62–63 (C. C. A. 4); *National Labor Relations Board* v. *Blossom Products Corp.*, 121 F. (2d) 260, 261–262 (C. C. A. 3).

whose opening paragraph referred approvingly to the company's April 26 bulletin attacking national unions; the message suggested that the delegates undertake "the formation" of a bargaining agency; and it urged them to "set up" an organization, to "select your own" officers and adviser, and "adopt your own" bylaws and rules (*supra*, p. 21). Clearly the Board could properly find (R. 965) that at the May 24 meetings the company "urged its employees to organize and to do so independently of 'outside' assistance." [22]

The conclusion that by the May 24 meetings the company canalized the employees' choice in the direction of its desired form of organization is reinforced by still other considerations. The message was delivered on company premises by high company officials to a small group of delegates chosen upon the company's request; the company officials, as they had prearranged, informed the selected delegates that they could remain in the auditoriums for further discussion of the matter (*supra*, pp. 21–22); and at Richmond the company hastened action by its promise in respect of a

[22] Indeed, even if the company's expression of preference had been less patent, and more subtly put, the conclusion would be no different: as this Court has said, "Intimations of an employer's preference, though subtle, may be as potent as outright threats of discharge." *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 600; cf. *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 78.

wage increase (*supra*, p. 21). Thus by arranging to have the movement for organization of the employees stem directly from an appeal by company officials whose opposition to national labor organizations had long been made clear, by having the officials make the appeal at a time when no competing representatives of outside organizations were present, and by providing a setting in which the delegates, urged by the company to remain, could proceed immediately to "set up" the organization, the company assured creation of an organization of its own, rather than of the employees', choice. As the Board found, "The [company's] actions converted the delegates, isolated from their constituents and under the immediate influence of the officials, into virtual representatives of the employer among the employees who had elected them" (R. 965); "the mechanics of the meetings of May 24, no less than the speech itself, assured the formation of an 'inside' union" (*ibid.*).

Nor did the company's interference end when it had set its employees' feet upon the path of "inside" unionism. Throughout the Independent's organizational period the company in many ways multiplied the indications that it favored an inside union and that it wanted the employees to organize it and become members. Liberal use of company property and facilities was made by the organizers (*supra*, pp. 22–25, 27); supervisors cooperated in arranging the organization meetings,

and for attendance by the employees during working hours (*supra*, pp. 22–23);[23] and the company promptly promised to furnish the organizers with a list of all employees (Bd. Exhs. 39, 40A, 40B, R. 855–858, 457–459). President Holtzclaw's promise with respect to a wage increase was used as an argument in favor of forming the Independent (R. 100, 796–797, cf. R. 71). Widespread solicitation of members on company time and property ensued (*supra*, p. 25). In the midst of the campaign, Mann, a most outspoken opponent of inside unions, was discharged (*infra*, pp. 49–52),[24] and Supervisor Edwards spied on C. I. O.

---

[23] There is also evidence, upon which the Board made no finding, by a number of witnesses (though denied by Superintendent Bishop (R. 820, 391, 396)), that in April and May 1937, Bishop had urged the men to form an inside organization after warning against the C. I. O., and had given one of them a booklet describing a company union plan (R. 63–64, 71, 83, 96–97, 104–106, 162, cf. R. 403). The court below agreed that there was "some evidence that * * * Bishop * * * encouraged another organization," but said that his effort "came to naught and impeded rather than helped the organization of the" Independent, and so had no tendency "to establish domination and interference" in connection with the Independent (R. 1015). But Bishop's activities cannot thus lightly be dismissed simply because the company promptly thereafter absorbed the movement on a broader basis; Bishop's action clearly helped to make the ground ready for the entirely consistent action of the company.

[24] This Court has recognized that a well-timed discharge of an "outside" union sympathizer may constitute support of an "inside" union. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 589, 598, 599; see also *National*

meetings and threatened employees with discharge if they continued "messing with the C. I. O." (*supra*, p. 28). That these constituted powerful forms of interference with, and support of, the Independent is not open to debate. *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 77–78; *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 598–599; *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318, 333–338.

The company cannot avoid responsibility for these activities on the plea of ignorance or lack of consent. In the light of the widespread and public use of company facilities and property,[25] often with the cooperation of supervisors (*supra*, pp. 22–25, 27), the Board's inference (R. 968) that the company gave "tacit, if not express, consent to the use of its premises" is warranted. Cf. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 592.[26]

Labor Relations Board v. *American Potash & Chemical Corp.*, 98 F. (2d) 488, 495 (C. C. A. 9), certiorari denied, 306 U. S. 643.

[25] Local newspapers carried advance notices of the meetings on company property, prominently mentioning their place (Resp. Exh. 11, R. 862, 863, 865, 866, 247–248).

[26] The court below minimized the significance of the solicitation on company premises for the Independent on the ground that it was balanced by like solicitation on behalf of outside unions (R. 1016). But even if this finding were within the court's competence, the evidence shows that while there was some solicitation for outside unions on company

Similarly, the company is responsible for the support rendered to the Independent by the anti-C. I. O. activities of Supervisor Edwards.[27] Edwards was one of 10 supervisors having authority over 280 employees (R. 386); his authority included the power to assign work and to discipline employees (R. 153). His anti-union actions were consistent with the company's policy of opposition to outside unions, and with the anti-union activities of his own direct superior, Superintendent Bishop (*supra*, pp. 14–15, 35). In these circumstances the company's responsibility for Edwards' campaign against the C. I. O. is settled by the governing decisions of this Court. *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 79–81; *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 520–521; *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 599.[28]

---

property (R. 178–179, 670, 684, 710, 730–732) it was occasional and scattered in comparison with the solicitation for the Independent; one Independent solicitor, for example, testified that he had openly conducted his drive on company time and property for over a month with no reprimand from the company (R. 76–77). As in the *Link-Belt* case the activity on behalf of the outside unions did not have "the magnitude and intensity of the acts of solicitation on company time by" the Independent (311 U. S., at 590).

[27] The court below held to the contrary on the ground that Edwards occupied a "minor supervisory position" and that his activities were "contrary to the policy of the company and were clearly nothing more than the utterance of his own individual views" (R. 1018).

The conclusion that the Independent was brought into being with the company's vigorous aid in order to defeat genuine self-organization is further reinforced by the striking fact that the company, after brief negotiations, accorded to the Independent a closed shop and the check-off of union dues (*supra*, pp. 25–26). The promptness with which the company granted these concessions, and, indeed, their being granted at all, are significant factors evidencing the company's desire to aid the Independent.[28] It is recognized that these provi-

[28] It is immaterial, even if true, that Edwards and other supervisors had received instructions to refrain from interference. The mere issuance of such instructions does not exhaust the employer's duty under the Act; he must, at the least, communicate his neutrality to the employees generally (*H. J. Heinz Co.* v. *National Labor Relations Board*, 110 F. (2d) 843, 847 (C. C. A. 6), affirmed, 311 U. S. 514, 519–521; *Oughton* v. *National Labor Relations Board*, 118 F. (2d) 486, 489 (C. C. A. 3), pending on petition for certiorari, No. 98, this Term), or take some other "effective means to stop repeated violations of the Act" (*Swift & Co.* v. *National Labor Relations Board*, 106 F. (2d) 87, 93 (C. C. A. 10)). To the extent that the employer is in a position to "secure any advantage" from the interfering practices, he is responsible for them even if he "did not authorize or direct them." *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S., at 520; the *Machinists* case, *supra*, at 80–81; the *Link-Belt* case, *supra*, at 599.

[29] A closed shop is often the last step in the familiar company union pattern. Joseph Rosenfarb, *The National Labor Policy* (1940), pp. 256–257.

sions are usually opposed by employers in dealing with a *bona fide* union.[30] In the instant case, the company, in its April 26 notice dealing with outside unions, had found it expedient to emphasize the fact that the employees were not, under the Act, compelled to join unions or to pay dues (*supra*, pp. 17, 31). Yet it quickly agreed to subject the men to precisely those requirements in the case of the inside Independent. The conclusion is compelling that the company thus sought to entrench the Independent by insuring universal membership and a guaranteed source of income. The Board has often held that the grant of a closed shop or a check-off in circumstances such as these constitutes the interference and support proscribed by the Act.[31]

---

[30] According to the National Industrial Conference Board, "There is no questioning the fact that an overwhelming majority of executives who determine the policies of their companies are strongly opposed to the closed shop principle." National Industrial Conference Board, *Studies in Personnel Policy, No. 12, The Closed Shop* (March 1939), p. 11. "The average employer's opposition to the check-off is even more intense than to the closed shop." Robert R. R. Brooks, *When Labor Organizes* (1937), pp. 18–19.

[31] E. g. *Matter of Clinton Cotton Mills*, 1 N. L. R. B. 97, 106–112; *Matter of Ansin Shoe Mfg. Co.*, 1 N. L. R. B. 929, 935–937; *Matter of Highway Trailer Co.*, 3 N. L. R. B. 591, 609–610; *Matter of Titan Metal Mfg. Co.*, 5 N. L. R. B. 577, 585, enforced, 106 F. (2d) 254 (C. C. A. 3), certiorari denied, 308 U. S. 615; *Matter of Heller Bros. Co. of Newcomerstown*, 7 N. L. R. B. 646, 652, 656; *Matter of Lone Star Bag and Bagging Co.*, 8 N. L. R. B. 244, 253–254; *Matter of Jen-*

But without reference to the details of the company's activities, it is submitted that the entire sequence of events viewed in the large furnishes ample support to the Board's conclusion of interference, domination, and support. For the short answer to any assertion that the Independent was not employer-supported or interfered with is that from the beginning, even apart from the precise contents of its messages and notices, the company, not the employees, played the dominant role. The Independent was not a spontaneous movement of the employees; the stimulus, on the contrary, flowed solely from the company. The movement indisputably had its beginnings in the company's unsolicited notices of April 26. When the response to these notices indicated the employees' wish for organization and collective bargaining, the company again intruded to assure itself that any organization formed would take the shape it wished. The company, not the employees, called the meetings of May 24, and, through its ranking supervisors, summoned representatives to

---

sen Radio Mfg. Co., 27 N. L. R. B., No. 144. The circuit courts of appeals have been in agreement. E. g. *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board*, 104 F. (2d) 49, 53 (C. C. A. 8); *National Labor Relations Board* v. *Ed. Friedrich, Inc.*, 116 F. (2d) 888, 890 (C. C. A. 5); *National Labor Relations Board* v. *Blossom Products Corp.*, 121 F. (2d) 260, 262 (C. C. A. 3); *National Labor Relations Board* v. *West Kentucky Coal Co.*, 116 F. (2d) 816, 819–820 (C. C. A. 6); *National Labor Relations Board* v. *J. Greenbaum Tanning Co.*, 110 F. (2d) 984, 986–987 (C. C. A. 7), certiorari denied, 311 U. S. 662.

hear the company officials. As the court below held (R. 1012–1013) and as the company has conceded (R. 965, fn. 16), the Independent came into being as an immediate result of these company meetings and addresses of May 24. This in itself furnishes basic support for the Board's finding of domination, interference, and support. For if an employer, rather than his employees, may choose the time, place, and circumstances under which collective organization of his employees shall be born, we think it plain that the employer will await conditions favorable to himself and that the organization which he then causes to be created necessarily will reflect his will rather than that of his employees.

In sum, this is plainly a case where the employer has "intruded to impair [the employees'] freedom"; it follows that the Independent was "not the result of the employees' free choice." *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 587. The Board's findings that the company dominated, interfered with, and supported the Independent, and that thereby, and through the anti-union activities of Superintendent Bishop and Supervisor Edwards (*supra*, pp. 14–15, 28), interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in section 7, are clearly supported by substantial evidence. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584; *International Association of Machinists* v. *National Labor Relations*

Board, 311 U. S. 72; *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318; *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240.

C. The order requiring the company to disestablish the Independent, and to reimburse employees for Independent dues deducted by the company from their wages, is valid

1. The Board's order required the company to cease and desist from its domination, interference, and support, and to withdraw recognition from and completely disestablish the Independent as bargaining representative (R. 978, 979). The validity of these provisions is not open to question. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 271; *National Labor Relations Board* v. *Newport News Shipbuilding and Dry Dock Co.*, 308 U. S. 241, 251; *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318, 321–322, 333; *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 600; *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 521–523; *Westinghouse Electric & Mfg. Co.* v. *National Labor Relations Board*, 312 U. S. 660, affirming per curiam, 112 F. (2d) 657 (C. C. A. 2). Of equally settled validity is the provision (R. 978–979) requiring the company to cease giving effect to its contract with the Independent. *National Licorice Co.* v. *National Labor Relations Board*,

309 U. S. 350, 360–361; *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 75, 81.

2. The Board's order further required the company to reimburse each employee in an amount equal to the dues and assessments deducted from his wages by the company and paid over to the Independent (R. 980). Since the court below rejected the Board's findings in relation to the Independent, it did not pass upon the validity of this provision. Other circuit courts of appeals, under varying circumstances, have refused to enforce similar provisions,[32] although two such courts have indicated that, in appropriate circumstances, a reimbursement provision may be valid.[33] One circuit

---

[32] Cases in which the reimbursement order has been refused enforcement although the check-off was accompanied by a closed-shop agreement with a union found to be company-dominated are *National Labor Relations Board* v. *J. Greenebaum Tanning Co.*, 110 F. (2d) 984 (C. C. A. 7), certiorari denied (employer's petition), 311 U. S. 662; *Kansas City Power & Light Co.* v. *National Labor Relations Board*, 111 F. (2d) 340 (C. C. A. 8); and *National Labor Relations Board* v. *West Kentucky Coal Co.*, 116 F. (2d) 816 (C. C. A. 6) (Arant, J., dissenting). Cases refusing enforcement in which the check-off was not accompanied by a closed-shop provision and in which employees individually requested that their dues be checked off are *Western Union Telegraph Co.* v. *National Labor Relations Board*, 113 F. (2d) 992 (C. C. A. 2); *National Labor Relations Board* v. *Continental Oil Co.*, 121 F. (2d) 120 (C. C. A. 10) and *A. E. Staley Mfg. Co.* v. *National Labor Relations Board*, 117 F. (2d) 868 (C. C. A. 7).

[33] *Kansas City Power & Light Co.* v. *National Labor Relations Board*, 111 F. (2d) 340, 348 (C. C. A. 8); *National Labor*

court has withheld decision pending this Court's present determination.[34] The issue is of novel impression in this Court.

We think that, in the circumstances of the present case, it was within the Board's power and discretion to require reimbursement of each employee by the company in the amount of dues which the company checked off his wages and paid over to the Independent. As we have shown (*supra*, pp. 12–42), the Board, upon substantial evidence, found that the company was responsible for the creation of the Independent, and that it interfered with, dominated, and supported that organization. As the capstone of its support, the company quickly granted to its creature a closed-shop contract which, because made with an organization "established, maintained, or assisted" by unfair labor practices, was illegal. Section 8 (3) of the Act; *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72. This contract unlawfully compelled the employees, under penalty of discharge, to acquiesce in the company's selection of their bargaining representative.[35] Concurrently and interrelated with the imposition of this requirement, the

---

Relations Board v. *Continental Oil Co.*, 121 F. (2d) 120, 125 (C. C. A. 10).

[34] *National Labor Relations Board* v. *Blossom Products Corp.*, 121 F. (2d) 260 (C. C. A. 3).

[35] Two employees who refused to become members of the Independent were discharged (*supra*, pp. 26–27).

company assured the Independent's financial stability by agreeing with it to deduct and pay over from the wages earned by each employee the amount of his dues in the illegal organization (*supra*, pp. 25–26). No employee could avoid this requirement; the Independent's constitution and bylaws (Bd. Exh. 36, R. 855, 247) expressly provided that each member "shall direct the proper disbursing officer of the Company to deduct the amount of such member's dues from his wages, and pay the same" to the Independent, and that "Any member failing to pay the dues as required" would forfeit his membership. Thereby, of course, under the closed-shop provision, he would also forfeit his employment.

In these circumstances the moneys deducted from the employees' wages and paid over to the Independent were not, in even the remotest sense, voluntary payments by the employees; instead they constituted forced tributes levied upon the employees for maintenance and support of the very instrument by which the company foreclosed any genuine exercise of the rights of self-organization and collective bargaining. Without the semblance of choice on their part, the employees were compelled to forego a portion of their earned wages and to allow the company to withhold it and turn it over to the organization which the company itself had caused to be created. That by this exaction the employees suffered a definite, measurable loss

in wages equal to the amount of the deductions is plain; the loss is as certain as if the company each week had, in violation of section 8 (3) of the Act, discriminatorily laid off the employees without pay for a period equivalent to that in which the deducted wages were earned.

The Board's determination that this wage loss should be borne by the company whose unfair practices caused it, rather than by the employees who were simply the innocent victims, is manifestly reasonable. Upon finding a violation of the Act, the Board, in addition to issuing a cease and desist order, may require an employer to take "such affirmative action * * * as will effectuate the policies of this Act." Section 10 (c); *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177. The dues reimbursement order, in circumstances such as are here present, undoubtedly effectuates the policies of the Act: by returning to the employees what was wrongfully exacted from them, it does no more than to reestablish the status quo. Only thus can there be "a restoration of the situation, as nearly as possible, to that which would have obtained but for the" company's unfair labor practices. *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 194; *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862, 872 (C. C. A. 2), certiorari denied, 304 U. S. 576. In the truest sense the order is "remedial,"

not punitive. Cf. *Republic Steel Corp.* v. *National Labor Relations Board,* 311 U. S. 7.

In short, we submit that withholding part of an employee's wages under such potent compulsion is as direct an injury as a loss of pay caused by a discriminatory discharge and calls as forcibly for an appropriate restorative remedy. In either case the Board is entitled to require the employer "to make good to the employees what they had lost" through the unfair labor practice. *Republic Steel Corp.* v. *National Labor Relations Board,* 311 U. S. 7, 13. In no other way can the employer's unlawful conduct be completely cancelled and the unfair practice eradicated "as from the beginning." *Agwilines, Inc.* v. *National Labor Relations Board,* 87 F. (2d) 146, 151 (C. C. A. 5).

After mature consideration of the problem, the Board has concluded that, in appropriate circumstances, a dues reimbursement provision does effectuate the policies of the Act, and has directed such relief.[38] Under the Act the particular

[38] While, at the time the instant petition for certiorari was filed, it was the Board's practice to direct a like form of relief in all cases in which it found a violation of section 8 (2) of the Act, and in which there was a check-off agreement between the employer and the dominated union (Pet. 26), the practice has since been modified so that the Board now considers each case individually on its own facts and circumstances and on that basis determines whether a dues reimbursement provision is, or is not, appropriate. The Board thus did not direct dues reimbursement in its recent

means by which the effects of unfair labor practices are to be expunged is, as this Court has repeatedly recognized, a matter "for the Board, not the courts, to determine." *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 82; *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 600; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 271. The Board's determination is final unless arbitrary; it was not arbitrary here. In this case the only means remaining to employees who wished to resist the company's illegal practices, namely, a refusal to pay dues, was removed and, by the combination of the closed-shop and check-off arrangement, the employees were kept firmly bound to the dominated Independent. To say that the Board may not in these circumstances direct reimbursement of the employees for the dues which the company deducted from their wages and paid over to its nominee is to assert that an employer who chooses to establish and maintain an illegal labor organization as a means of forestalling genuine self-organization until such time as the Board can issue an order and the courts enforce it, is free to foist the cost of maintenance upon the employees, without fear that he may be required to refund that cost to them in addition to

---

decisions in *Matter of Stehli & Co., Inc.*, 35 N. L. R. B., No. 12; and *Matter of Southern Bell Telephone & Telegraph Co.*, 35 N. L. R. B., No. 137.

ceasing his illegal conduct. The Act impels no such result.

II

THERE IS SUBSTANTIAL EVIDENCE SUPPORTING THE BOARD'S FINDINGS THAT THE COMPANY DISCRIMINATED AGAINST CERTAIN OF ITS EMPLOYEES IN VIOLATION OF SECTION 8 (3) AND (1) OF THE ACT

The Board found that the company discriminatorily discharged Everard M. Mann, A. F. Staunton, Robert E. Elliott, Jr., and T. N. Harrell, Jr., in violation of section 8 (3) and (1) of the Act (R. 969–974). The court below rejected these findings as unsupported by substantial evidence. We think these findings have the requisite support and that the corresponding provisions of the Board's order were, accordingly, entitled to enforcement.

Mann.—Mann was employed by the company as a streetcar operator at Norfolk from July 29, 1936, until his discharge on June 1, 1937 (R. 139, 143, 392). On May 27, Mann walked into the dispatcher's office at Norfolk and, unaware that Superintendent Bishop was there, inquired, "Has anybody seen this guy Bishop?" Bishop, who was in the office reading a newspaper, lowered it, and the dispatcher said, "Mr. Bishop is sitting right over there." Mann looked at Bishop but said nothing and walked out (R. 392). On June 1, Bishop discharged Mann on the alleged ground that Mann had been disrespectful to him (R. 143, 379, 381, 394, 409).

The Board found that this stated ground was but a pretext and that the true reason for Mann's discharge was his union activities (R. 970). Only a short time before his discharge, Mann had taken the lead in opposing the company-favored type of unionism: On May 11, at a meeting of the Norfolk transportation employees held on the company's premises, he had spoken out vigorously against the formation of an inside union, had advocated that the employees join a nationally affiliated organization, and had announced his preference for a C. I. O. union which he joined shortly after the meeting (R. 140–141, 115, 128, 144, 147). Thereafter he had continued to urge his fellow-employees to join a national union (R. 144).

Upon these facts the Board was justified in finding that Mann's demonstrated and strong advocacy of outside unions, not the minor incident in the dispatcher's office, was the true reason for his dismissal. Compare *National Labor Relations Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318, 330–333; *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 589, 600. Mann's misconduct, if any, was undeniably slight,[37] and the punishment meted out to him grossly disproportionate to the offense. The man who dis-

[37] As the Board noted (R. 970), it is clear that Mann intended no affront to Bishop because his very question revealed that he was unaware of Bishop's presence.

charged him, Bishop, had in the past resorted to a variety of anti-union measures to implement the company's policy of opposition to self-organization.[38] Bishop's subordinate, Supervisor Edwards, was at that very time warning employees that those who kept "messing with the C. I. O." would lose their jobs (*supra*, p. 28). All these circumstances clearly "made permissible the Board's conclusion that [Mann's] activity on behalf of the 'outside' union was the basic cause of his discharge." *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 589. Particularly is that conclusion reasonable in light of the fact that the discharge was timed to occur during the "critical formative" period (*Kansas City Power & Light Co.* v. *National Labor Relations Board*, 111 F. (2d) 340, 349 (C. C. A. 8)) of the Independent when, by providing a telling object lesson to those who might otherwise keep "messing with the C. I. O.," it lent powerful support to the campaign of the inside, company-favored competitor. "Motive is a persuasive interpreter of equivocal conduct". *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 559. The Board's finding that Mann was dis-

[38] Bishop had questioned employees about union activities (*supra*, pp. 14–15), had directly suggested the formation of an inside union (*supra*, p. 35), and was the official to whom the company's labor spy had made his reports (*supra*, p. 14).

criminatorily discharged because of his union activity is, we submit, supported by substantial evidence.[39]

Staunton and Elliott.—The evidence establishes (R. 172–173, 180, 181, 267–268, 858–859, 878, 880), as the Board and the court below concurrently found (R. 970–973, 1017), that on November 4, 1937, in accordance with the closed-shop contract made between the company and the Independent (*supra*, p. 26), the company discharged two employees, Staunton and Elliott, because they refused to join the Independent. Since the Board properly found the closed-shop contract to be illegal for reasons reviewed above (*supra*, pp. 42–43,

---

[39] The Board properly refused (R. 970) to credit Bishop's disclaimer of knowledge of Mann's union activities (R. 394); Bishop had long engaged in ascertaining the names and activities of outside union adherents, and his son had been present at the meeting at which Mann so vigorously expressed his union views (R. 476). In any event, the Board "was not required to deny relief because there was no direct evidence that the employer knew [Mann] had joined [the C. I. O.] and was displeased or wanted to make an example of" him. *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 602. The company's further contention at the hearing, that Mann's accident record was a basis for his discharge, is refuted by its official's own testimony that "the real reason * * * was his disrespect," and that except for that he would "probably still be working" (R. 379, 381, 394). Moreover, Mann's accident record was better than that of other operators whose employment continued; other operators cost the company "a great deal more money" over the same period (R. 572); during the period of his employment Mann was deemed responsible for only $63.37 of accidents, a comparatively low figure (Resp. Exh. 46, R. 888a, 571, 816–817).

44), it follows as a matter of law that these discharges were in violation of the Act.[40]

Harrell.—Harrell had been employed by the company since April 1936, when he was hired as a temporary lineman's helper in the Norfolk distribution department (R. 202). His pay was increased by 10 percent in February 1937; the company's records show that he was then considered a "good reliable worker" (Resp. Exh. 24B, R. 879, 366–367, see also R. 170). In August 1937, Harrell was reclassified upward as a third-class lineman and, in addition to the general wage increase granted by the company pursuant to its contract with the Independent, he, together with some others, received a special five-cent-an-hour increase (Resp. Exh. 24C, R. 879–880, 366–367, 384). In November 1937, Harrell was transferred to the company's roll of permanent employees (Resp. Exh. 24D, R. 880, 366–367).

In March 1938, orders were received by the distribution department in Norfolk to reduce its pay

---

[40] Section 8 (3); *Corning Glass Works* v. *National Labor Relations Board*, 118 F. (2d) 625, 629 (C. C. A. 2); *National Labor Relations Board* v. *J. Greenebaum Tanning Co.*, 110 F. (2d) 984, 986–987 (C. C. A. 7), certiorari denied, 311 U. S. 662; *Hamilton-Brown Shoe Co.* v. *National Labor Relations Board*, 104 F. (2d) 49, 54 (C. C. A. 8); *Warehousemen's Union* v. *National Labor Relations Board*, 121 F. (2d) 84, 86–87 (App. D. C.), certiorari denied, October 27, 1941, Nos. 627, 628, this Term; see also *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 75, 81; *National Labor Relations Board* v. *National Motor Bearing Co.*, 105 F. (2d) 652, 659–660 (C. C. A. 9).

roll by 10 percent (R. 365, 382). General Foreman May consulted with his superiors, Crafton, superintendent of the distribution department, and Holik, superintendent of light and power (R. 535), and 13 linemen were selected to be laid off on March 31, 1938 (R. 364–365, 521–522). The Board found that Harrell's inclusion among those selected was attributable to his membership in and activity on behalf of the International Brotherhood of Electrical Workers (hereinafter called the Brotherhood), an A. F. of L. affiliate (R. 947).

Superintendent Crafton testified that three factors were utilized in the selection of Harrell and the other employees laid off: "First, seniority; second, their ability; and the third, their dependents", with seniority the prime factor (R. 539, 551, see also R. 365). But disinterested application of these factors cannot account for Harrell's selection. Harrell had greater seniority than five of the eight third-class linemen retained (Resp. Exh. 22, R. 879, 366, 522, 542); his ability was unquestioned;[41] and he had a wife and child

[41] In addition to the evidence of ability reflected upon the company records (*supra*, p. 53), Foreman Tomlinson had specifically requested General Foreman May to assign Harrell to his gang because "he was a good worker" whom he would like to have "as a regular man in the gang" (R. 478). Indeed, Tomlinson had sufficient confidence in Harrell's ability to have him cut in 2,300-volt lines "hot," work normally done by first-class linemen (R. 480–481); May conceded that this was good work (R. 531).

and the added responsibility of paying for a home (R. 208), while it does not appear that any of the five employees retained had corresponding family responsibilities. Accordingly, some other distinguishing factor must have been made the basis of the company's preference of the five employees over Harrell. The evidence points to union activity as constituting this factor.

Harrell joined the Brotherhood on June 25, 1937, and was one of its charter members (R. 203). He actively solicited membership for the Brotherhood, often discussed that organization with his fellow employees, and disparaged the Independent (R. 203, 193, 672). Shortly after a meeting in the company's Cove Street garage at Norfolk, at which the Norfolk distribution department employees voted to form an inside union, Harrell told May, the general foreman, that he disapproved of the plans for a "company union" (R. 210, 217). Harrell later told May that he had joined the Brotherhood; May replied that he saw no reason why a man should join an outside union and that he had never seen any good resulting from such an organization (R. 217–218). Moreover, Harrell, alone of his group, was an outspoken critic of the company-favored Independent, and protagonist of the Brotherhood.[42] In view of the

[42] At the time of the lay-off, the Brotherhood was engaged in an active membership drive in which Harrell was taking a prominent part (R. 204).

company's hostility to outside organizations, the Board reasonably could infer, as it did, that Harrell was selected for lay-off because of his union membership and activities.

In making this finding, the Board rejected (R. 974) the company's contention at the hearing, based largely upon the testimony of General Foreman May (R. 522, 527–528, 531, cf. R. 543, 557–558), that Harrell was laid off because he had a quarrelsome disposition which had caused trouble in the plant. In holding that the Board's finding of discriminatory lay-off is supported by "no evidence" (R. 1017), the court below appears to have held that the Board acted arbitrarily in not accepting May's testimony. But there are various reasons why the Board's action in this respect was not capricious.[43]

First, May's testimony is rather general: that Harrell kept "the men worked up all the time," that "he couldn't get along with" the men, and that he was "keeping a general uproar and dissatisfaction" (R. 522, 527–528, 531). But super-

[43] May also testified that Harrell was laid off for the additional reason that he had not progressed as rapidly as others (R. 522). Since there is ample evidence that Harrell was an apt and able employee (*supra*, pp. 53–54), and was impeded in advancement because of an injury suffered in the company's employ (R. 220), there were sufficient bases for the Board's rejection (R. 974) of this claim. The court below did not mention this questionable part of May's explanation.

visors having direct contact with Harrell presented a contrasting picture. May himself admitted that "most of the foremen liked" Harrell and that Foreman Tomlinson had asked that Harrell be permanently transferred to his gang (R. 527); Foreman Fowler stated that he had never had "a bit" of trouble with Harrell (R. 472–473); and there is undenied testimony that Foreman Tweedy had stated that he "got along fine with" Harrell (R. 187). Second, the principal specific instance of "quarrelsomeness" to which the company points was an altercation between Harrell and an employee named Davenport, which admittedly had its roots in a dispute in which Harrell had engaged at an Independent meeting (R. 220–222, 490–491, 494, 533–534). That Harrell was denied even-handed treatment on this occasion is witnessed by the fact that, without his version's having been ascertained (R. 528–529, 222), he was reprimanded and temporarily forced to change places with a Negro helper as a disciplinary measure (R. 221–222, 488, 520), while Davenport was not cautioned or disciplined in any way (R. 489). Third, Harrell's friction with other employees would not explain his discharge for in similar cases the offending person was transferred to another gang (R. 531–532, 493, 565–566); when Harrell, however, sought to be transferred, his request was refused (R. 530–531).

In short, the evidence did not require acceptance of this explanation advanced by the company. Indeed, at one point in his testimony, Superintendent Crafton admitted that Harrell's attitude did not have "anything to do" with his lay-off (R. 551).

At the most, therefore, the evidence as a whole permitted conflicting inferences, and that "is not enough" to overturn the Board's choice. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 559–560. See also, *Swayne & Hoyt, Ltd.* v. *United States,* 300 U. S. 297, 304, 307; *National Labor Relations Board* v. *Waterman Steamship Corp.,* 309 U. S. 206, 226; *National Labor Relations Board* v. *Link-Belt Co.,* 311 U. S. 584, 596–597.

Upon the findings of violation of section 8 (1) and (3) of the Act the validity of the Board's order requiring the company to cease and desist from its unfair practices and to reinstate Mann, Staunton, Elliott, and Harrell with back pay, is settled. *Phelps Dodge Corp.* v. *National Labor Relations Board,* 313 U. S. 177; *National Labor Relations Board* v. *Link-Belt Co.,* 311 U. S. 584; *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.,* 304 U. S. 333.

CONCLUSION

It is respectfully submitted that the decree of the court below should be reversed, and the cause

remanded with directions to enforce the Board's order in full except as to its work relief provisions.

CHARLES FAHY,
Acting Solicitor General.
RICHARD S. SALANT,
Attorney.

ROBERT B. WATTS,
General Counsel,
LAURENCE A. KNAPP,
Associate General Counsel,
MORRIS P. GLUSHIEN,
OWSLEY VOSE,
Attorneys,
National Labor Relations Board.

OCTOBER 1941.

APPENDIX

National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C., Supp. V, Sec. 151, *et seq.*):

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organ-

ization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

* * * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as

will effectuate the policies of this Act. * * *

* * * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

* * * * *

U. S. GOVERNMENT PRINTING OFFICE, 1941

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

Nos. ~~758, 759~~ 25.26

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

vs.

VIRGINIA ELECTRIC AND POWER COMPANY.

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

vs.

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY

BRIEF FOR RESPONDENT VIRGINIA ELECTRIC AND POWER COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

VIRGINIA ELECTRIC AND POWER COMPANY,

By

T. JUSTIN MOORE,
GEORGE D. GIBSON,
STEPHEN H. SIMES,
Electric Building,
Richmond, Virginia,
Counsel for Respondent.

HUNTON, WILLIAMS, ANDERSON,
GAY & MOORE,
Of Counsel.

Dated March 17, 1941.

PRINTED BY *Lewis Printing Co.*, RICHMOND, VA.

Table of Contents

	Page
OPINION BELOW	1
JURISDICTION	2
STATEMENT OF THE CASE	2
1. Action by the Company	2
2. Organizational Activities Among the Employees	9
QUESTIONS PRESENTED	12
SUMMARY OF ARGUMENT	13
ARGUMENT	14
1. The Decision Setting Aside the Disestablishment Order Does Not Present Any Question that Should be Reviewed by this Court	14
2. The Point of Interference is Plainly Ineligible for Review	22
3. The Point of Reimbursing Checked-off Dues is Not Presented	23
CONCLUSION	25

Table of Cases Cited

Page

Appalachian Electric Power Co. v. N. L. R. B., 1938, C. C. A. 4, 93 F. (2d) 985 14

Consolidated Edison Co. v. N. L. R. B., 1938, 305 U. S. 197 ..... 14, 20

E. I. duPont de Nemours & Co. v. N. L. R. B., 1940, C. C. A. 4, 116 F. (2d) 388 21

L. Greif & Bro. v. N. L. R. B., 1939, C. C. A. 4, 108 F. (2d) 551 21

H. J. Heinz Co. v. N. L. R. B., January 6, 1941, No. 73, this Term, 85 L. ed. 303 ..... 14, 15, 16, 21, 22

International Association of Machinists v. N. L. R. B., 1940, 311 U. S. 72 22

Jefferson Electric Co. v. N. L. R. B., 1939, C. C. A. 7, 102 F. (2d) [illegible] 3, 20

Kansas City Power &Light Co. v. N. L. R. B., 1940, C. C. A. 8, 111 F. (2d) 340 24

N. L. R. B. v. American Oil Co., Inc., 1940, C. C. A. 4, 114 F. (2d) 1009 22

N. L. R. B. v. Columbian Enameling & Stamping Co., 1939, 306 U. S. 292 14

N. L. R. B. v. Express Publishing Co., March 3, 1941, No. 442, this Term 20

N. L. R. B. v. Ford Motor Co., 1940, C. C. A. 6, 114 F. (2d) 905 20

N. L. R. B. v. J. Freezer & Son, Inc., 1938, C. C. A. 4, 95 F. (2d) 840 22

N. L. R. B. v. Greenebaum Tanning Co., 1940, C. C. A. 7, 110 F. (2d) 984, cert. den., No. 152, this Term 24

N. L. R. B. v. Highland Park Mfg. Co., 1940, C. C. A. 4, 110 F. (2d) 632 22

N. L. R. B. v. Hughes Tool Co., November 26, 1940, C. C. A. 5, (unreported) 24

N. L. R. B. v. International Shoe Co., 1940, C. C. A. 8, 116 F. (2d) 31 20

N. L. R. B. v. Link-Belt Co., January 6, 1941, Nos. 235, 236, this Term, 85 L. ed. 325 ..... 14, 15, 16, 23

Page

N. L. R. B. v. Mathieson Alkali Works, 1940, C. C. A. 4, 114 F. (2d) 796 ..... 21, 23

N. L. R. B. v. Union Pacific Stages, Inc., 1938, C. C. A. 9, 99 F. (2d) 153 20

N. L. R. B. v. West Kentucky Coal Co., 1940, C. C. A. 6, 116 F. (2d) 816 24

A. E. Staley Mfg. Co. v. N. L. R. B., January 30, 1941, C. C. A. 7, C. C. H. Labor Law Service, Par. 60,277; November 14, 1940, C. C. H. Labor Law Service, Par. 60,135 24

Virginia Ferry Co. v. N. L. R. B., 1939, C. C. A. 4, 101 F. (2d) 103 22

Western Union Telegraph Co. v. N. L. R. B., 1940, C. C. A. 2, 113 F. (2d) 992 24

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

Nos. 758, 759

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

vs.

VIRGINIA ELECTRIC AND POWER COMPANY.

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

vs.

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY

BRIEF FOR RESPONDENT VIRGINIA ELECTRIC AND POWER COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Opinion Below

The opinion of the court below (the Circuit Court of Appeals for the Fourth Circuit) is reported in 115 Fed. (2d) 414. It is also contained in the Record (Pro. 23-36).

The Decision and Order of the Board (P. A. I, 1-45)[1] are reported in 20 N. L. R. B., No. 87.

Jurisdiction

The date of the opinion and of the decrees sought to be reviewed herein is November 12, 1940 (Pro. 23, 37).

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Sections 10(e) and (f) of the National Labor Relations Act (herein called the Act).

Statement of the Case

A statement of the facts is, in view of the argumentative and incomplete presentation in the Petition, necessary to give the Court a fair statement of the issues involved. They may be briefly reviewed under the two headings of action by the Company and action by the employees:

1. Action by the Company

The Company is an electric utility in Virginia and North Carolina; it also, in Virginia, conducts a manufactured gas business and furnishes local transportation.

The early months of 1937 were, as shown by the record[2]

---

[1] The abbreviations used in the Petition are used also here except that the Independent Union is referred to as the "I. O. E.," the designation used throughout the hearing and the Decision and Order. In addition: (1) R. A. designates the appendix to the Company's reply brief; (2) C. I. O. designates Congress of Industrial Organizations; and (3) I. B. E. W. designates International Brotherhood of Electrical Workers, an affiliate of the A. F. of L.

[2] P. A. I, 288-290, 370.

and as the Court will take judicial notice[3], a time of tension and unrest in matters of labor organization. Confusion was prevalent, intensified by extreme positions taken on each side in certain localities. There were indications from the employees of the Company that they would like to know their position and that of the Company. The management conceived, therefore, that it had a duty to clarify this general preoccupation by a distinct statement of Company policy[4]. This was accordingly done by posting the bulletin of April 26, 1937 (quoted in full at Pro. 26).

Indigenous as it was to its time, the bulletin began with an introductory reference to the historical occasion for the interest which prompted its publication. After that it made, essentially, three substantive statements:

> (1) "The Company recognizes the right of every employee to join any union that he may wish to join, and such membership will not affect his position with the Company."
>
> (2) ". . . it is not at all necessary for him to join any labor organization, despite anything he may be told to the contrary."
>
> (3) "If any of you, individually or as a group, at any time, have any matter which you wish to discuss with us, any officer or department head will be glad, as they always have been, to meet with you and discuss them frankly and fully."

To the surprise of the management there were received during the next few weeks petitions from substantial numbers of men at various points throughout the system indicat-

---

[3] *Jefferson Electric Co.* v. *N. L. R. B.*, 1939, C. C. A. 7, 102 F. (2d) 949, 954.

[4] P. A. I, 78-79, 472, 500.

ing dissatisfaction with their wages and working conditions.[5] These included a request from many of the Norfolk transportation operators for a 50% wage increase and various requests from Richmond. Some of these could be granted, but the full wage request could not be. Satisfaction on the part of the employees is, however, an indispensable asset in a public service enterprise and it was essential that a state of satisfaction be restored. This seemed hardly possible while totally refusing the wage request; presumably there would have to be some threshing out of an intermediate decision that would give reasonable satisfaction to the men and fair recognition to the other factors involved. The trouble was that no mechanics were available for any such determination[6].

To determine a course of action all top supervisory officers were convened in consultation on May 20th[7]. They agreed that negotiation was apparently necessary and impending but that it would not be fair to consult with the fractional groups that had happened to petition without giving an opportunity to the other men to be heard and participate should they so desire. Only by such prior opportunity would there be any possibility of reaching a solution that could be expected to bring real satisfaction. The men of course were entitled to take such action as they might desire and only they could determine what they did desire. It was, therefore, determined to lay the whole problem before them and invite them to take such action, if any, as they might desire and to abide by the result, whatever it might be. This was to be done by an address, a method fol-

---

[5] P. A. I. 56-57, 257-259, 344-345, 475-476.

[6] P. A. I. 475-476.

[7] P. A. I. 54-56, 259-264, 290-293, 345-346, 364-366. These references cover the conclusion of the meeting as well as its convention.

lowed by departments, from time to time, for other purposes. But for the whole system, a mass meeting was impracticable, since operations are continuous in time and scattered in space. The men were therefore invited by department heads to select smaller numbers from among them as sample audiences in Richmond and Norfolk.

To these audiences a written address was read on May 24th, by the Company president in Richmond and a vice president in Norfolk (quoted in full at Pro. 27-28). Essentially this was an effort by the Company

> "to make it perfectly clear that its policy is one of willingness to bargain with its employees in any manner satisfactory to the majority of its employees and that no employee will be discriminated against because of any labor affiliations he desires to make."[8]

In answer to questions, the officials stated that no one had to join any organization and refused to advise as to type of organization (P. A. I, 20 and Pro. 29). In two particulars the Richmond meeting differed from the Norfolk meeting. For one, the President added an oral summary of the written address, as follows: he

---

[8] The Board, seeking partial emphasis by excerpts, looks largely to the last paragraph of the address and ironically emphasizes its position by the following textual change:

> "In view of your requests to bargain directly with the Company and in view of your right to self-organization as provided in the law, it will facilitate negotiations if you will proceed to set up your organization, select your own officers and adviser [changed to read *supervisors*], adopt your own bylaws and rules, and select your representatives to meet with the company officials whenever you desire."

> "explained to the employees that, in plain everyday English, that statement said that they had a right to do whatever they saw fit to do, and their actions must be determined by their own judgment; that neither the Company nor any of its officers or executives were to interfere with them in the slightest degree in arriving at a conclusion as to whether they wished collective bargaining with the Company, and if so, how they wished to carry out the collective bargaining" (P. A. I, 60).

The other difference was that to give the men, about 2500 in number and scattered through some 50 possible units in different communities, adequate opportunity for deliberate choice as to the decision they wished to make, the Company president said that if any wage increase should be made, as a result of collective bargaining or by the Company itself without any bargaining, it would begin one week from that date (P. A. I, 74-75 and 479-480). No such statement was made in Norfolk because the president's decision in that respect was not made until he advanced to the platform in the Richmond meeting.

In both meetings the officers then withdrew, leaving the men for discussion if they wished. The officers never knew, and made no attempt to learn, what happened after they left (P. A. I, 264 and 267).

Although absolute instructions were issued at the May 20th meeting, for transmission to all subordinate supervisors, that no person in any supervisory position should give any advice, influence, assistance or interference in respect of any organizational matter, the executives, fearing from the questions at the May 24th meeting that some employees might seek advice, caused similar instructions to be reiterated throughout the whole property on May 25th[9].

---

[9] P. A. I, 267-269, 303-307, 349-350, 368-370, 501-502.

These instructions included prohibition of use of Company property for any organizational meeting or solicitation (P. A. I, 308-309). They were promptly transmitted to the subordinate supervisors and no complaint of any violation was ever brought to management until the Board's proceedings.[10]

For two months management was in ignorance of what, if anything, was being done in regard to any labor organization or organizations, except only for occasional and shifting rumors through the public press. It took, moreover, no further action of any kind, except in three incidents near the middle of June. On June 14th a Norfolk transportation operator orally requested separate bargaining with a part of the Norfolk transportation employees (apparently not then organized and certainly unaffiliated)[11] and on June 15th an employee committee asked for a list of names of employees[12]. On June 24th a newspaper reported the Norfolk operator whose bargaining request had been denied to have publicly claimed an offer from the Company for a fine job

---

[10] P. A. I, 269, 307 370, 382-383, 427-428.

[11] This request was declined on the ground that, as stated in the May 24th address, the Company could not "in fairness to the Company or to the employees" deal with any such small group (P. A. I, 79, 267-271, 480-483, 493-494 and 496-497).

[12] The committee was designated as "Steering Committee for the Richmond Division for the proposed 'Independent Organization of Employees of The Virginia Electric & Power Co.'" (P. A. I, 308-309, 503-504 and P. A. II, 854-855, 858-859; Board Exhibit 39 and Board Exhibit 40-A). This list was supplied and the Company was paid for the cost of its preparation. The Company president testified that a similar list would have been given to any one requesting it in connection with any effort to organize the men, either to the A. F. of L. or the C. I. O. or any one else, but in fact no such request was received from any one else (P. A. I, 503-506).

elsewhere "to turn over his organization to the Company and leave Norfolk." This accusation, later shown to be false, was immediately denied by a bulletin posted all over the properties on the same day[13]. After denying the charge, this bulletin stated:

> "Employees of Virginia Electric and Power Company have a right to self-organization, to form, join or assist labor organizations and to bargain collectively through representatives of their own choosing, and the Company has not sought and does not seek to dominate or interfere with employees in the exercise of any of their rights, individually or collectively."

Some two months after the May 24th addresses, the Company president received a letter from the I. O. E. asserting representation of 89% of all non-supervisory employees and demanding prompt negotiation. On the statements of I. O. E. counsel (Resp. Ex. 13, P. A. II, 994-997) indicating that the organization was duly formed and accredited, a meeting was held, beginning on July 30th. At the outset the I. O. E. representatives produced for examination signed membership cards representing 90% of all non-supervisory employees[14]. Sharp differences of view were soon discovered and vigorously maintained, particularly the basic opposition of the Company to the closed shop provision and large wage increases, both of which were demanded by the I. O. E. In the course of almost continuous negotiations for three days and nights, the virility of which has not been questioned, a union agreement was negotiated

---

[13] P. A. I, 154-155, 386-387, 422, 429-430, 483-484; Respondent's Exhibit 7, P. A. II, 993.

[14] P. A. II, 745-746.

and prepared[15]. Both of the two leading issues were compromised, the wage demands by an intermediate figure (about 60% of the initial request) and the closed shop clause by requiring all employees to join but providing that such membership should not affect their position with, or privilege to join, other unions. After reports and authorizations within the I. O. E., the agreement was signed on August 5th[16].

Immediately thereupon the I. O. E. established its grievance committees and began its vigilant and aggressive career, as to the effective independence of which no question has been made. The check-off required by the contract began on August 20th, when the Company delivered $3,-784.50 to the I. O. E. as deductions from wages, then earned although not in all cases then due.[17]

The above summarizes all of management knowledge as to any matter of labor organization on the properties of the Company from the enactment of the Act until the filing of the complaint in this case. The I. O. E., however, actively intervening in the proceeding, disclosed the whole process of its creation with scientific detail.

2. Organizational Activities Among the Employees

After the May 24th addresses some of the audiences in Richmond and Norfolk decided to report the speech to their fellow employees and "see what they wanted to do about it, whether they wanted to form an organization, or what kind of an organization they wanted to form . . ."[18] Some of

---

[15] P. A. I, 66-69, 270-280, 311-332, 341-342, 356-359, 402-404, 415-417, 423, 495-496, 507-509; P. A. II, 695-706, 745-751, 853-854, 873, 904-905.

[16] P. A. I, 24; P. A. II, 704-705, 749-750.

[17] Board Exhibits 9, 26, 36, 53; P. A. II, 925, 949, 968, 992-993.

[18] P. A. II, 658 as to Norfolk (and *id.*, 657, 659, 720-722, 759 and 809); for Richmond see P. A. II, 840-841, 882, 892-895.

these report meetings were held on Company premises, in two cases (on the ground that a report only was intended) with permission by supervisory employees.[19] No knowledge of these occurrences, however, ever came to the executives, and no complaint was made.[20] In one instance alone a notice for such a report meeting was posted on one bulletin board.[21]

Between that time and June 15th many meetings of different groups of employees occurred, in which discussions were held and votes taken on the matter of organizational affiliation. Some minorities were disposed to the C. I. O. or the I. B. E. W., but the overwhelming majority in all groups proved to be in favor of an independent union.[22] Some of these meetings were on Company property,[23] others not;[24] so far as the record shows, all such meetings on Company property were without permission;[25] in several in-

---

[19] P. A. II, 841-842, 893-894, and 898-899.

[20] P. A. I, 269, 370, 501-502.

[21] All Petitioner's references to bulletin boards concern this one notice alone (Pro. 34).

[22] Interv. Ex. 3; P. A. II, 659-662, 722-728, 779-780, 796, 820, 822-823, 831, 875-877, 882-885, 887-888; Resp. Ex. 11, Norfolk *Virginian-Pilot*, May 28, 1937; *id.*, May 29, 1937; Interv. Ex. 33; P. A. II, 1035-1036. Apparently this was the first general consideration among the men of organizing. Aside from inconsequential pamphleteering in Richmond (P. A. II, 896) earlier in the year, there had been no movement toward organization except a few Norfolk employees joining a C. I. O. affiliate in May (P. A. I, 13, 166, 180-181 and 239); there seems, however, to have been no actual C. I. O. organization until June when an organizer arrived and officers were elected (P. A. I, 123, 124, 150-152, 237, 238 and 239; see also P. A. I, 129 and 149). The I. B. E. W. appeared in Norfolk some time in June and the Amalgamated "late in 1937" (P. A. I, 13).

[23] P. A. I, 120; P. A. II, 770, 823-824, 946, 1003-1008, 1035-1043.

[24] P. A. II, 883, 885, 907, 910.

[25] P. A. II, 722-723, 753, 811-812, 815-816, 820, 824, 833-834, 917.

stances the "Company" properties so used were the men's own Y. M. C. A. or other recreational rooms.[26]

Norfolk and Richmond representatives conferred on June 3rd and agreed on the joint employment of William Earle White, as counsel to prepare organizational papers.[27] Mr. White has never had any connection with the Company. Mr. White advised the men not to meet on Company property.[28] In the next two weeks numerous meetings in various groups in Richmond and Norfolk were held to consider and revise the drafts of constitution and by-laws prepared by Mr. White and a joint committee from the two cities was constituted for the purpose of final formulation. The committee discharged its task in the American Legion Hall in Richmond on June 15th in the course of a protracted and active session.[29] Solicitation of membership began shortly thereafter, as soon as the printed membership cards became available. For the most part I. O. E. solicitation was not on Company property or time;[30] in some instances, however, it was; and at the same time organizers for the A. F. of L. and C. I. O. discussed and solicited for those unions on Company property.[31]

After nominations and elections of representatives, by secret ballot, off Company property and time, on July 2nd

---

[26] P. A. II, 815-816; P. A. I, 122-123, 360-362.

[27] P. A. II, 768-769, 780, 789-791, 799-800, 810, 857-858, 868-869, 877-878.

[28] Such use was discontinued at once in Richmond and from June 15th in Norfolk, at which time Mr. White first had direct contact there. It was stipulated that no meeting has been held on Company property anywhere since June 15th (P. A. II, 908-909).

[29] Intervener's Ex. 22; P. A. II, 1026-1033; Board's Exhibits 26 and 36; P. A. II, 949, 950-968; P. A. I, 255; P. A. II, 771-773, 780-781, 847-851, 872, 884; Intervener's Exhibits 36, 37.

[30] P. A. II, 677, 775, 824-825, 834-835, 904; Resp. Ex. 13, P. A. II, 994-997.

[31] P. A. I, 174-175, 194-196; P. A. II, 754-756, 775-776, 792-794, 803-804, 827-830, 896; Intervener's Exhibit 21.

and July 12th, the new officials constituted the I. O. E. and undertook the formulation of its bargaining demands. After intensive canvas of their respective "voting sections" to ascertain the wishes of the men, all representatives met in plenary convention at a hotel at Ocean View, Virginia, on a July week-end to assemble all their various views into a coordinated series of proposals.[32] Those were ultimately put in the formal language of a proposed contract by Mr. White and after approval on the part of the I. O. E. this draft was then sent to the Company as the I. O. E. demand of July 19th above mentioned.

Questions Presented

The Petition presents only one basic question: whether the decision of the court below in so far as it set aside an order disestablishing the I. O. E. presents any matter of general importance in the administration of the Act, or in conflict with prior decisions of this Court, that deserves review. The Petition urges the affirmative of that question on the assertion that "conditions fairly attributable to the employer [particularly the text of the May 24th address] canalized the employees' choice in the direction of a particular labor organization" (Petition, p. 18) and that the court below refused to recognize subtlety as a violation of the Act, holding that only "a bald announcement" (*id.*) would contravene its provisions.

To this is added, but apparently only as a make-weight, a claim that the decision below in so far as it set aside a cease and desist order presents a matter of public importance, on the ground that there had been "anti-union threats and

---

[32] Intervener's Exhibits 15, 29; P. A. II, *684-686, 694-695, 741-745, 782, 804-805, 886-887.*

surveillance of union meetings" (Petition, p. 4) by one minor supervisory employee.

The only other question is one not presented or considered in the court below, *i. e.*, whether, upon disestablishment, the Board may require reimbursement of dues theretofore deducted from wages pursuant to a union agreement and individual assignments.

Summary of Argument

1. The Decision Setting Aside the Disestablishment Order Does Not Present Any Question That Should Be Reviewed By This Court.

The May 24th address was only a presentation of the practical problem to the men which left them completely free to follow whatever their own wishes might be. In so holding (and in similarly holding with respect to the other circumstances urged in the Petition) the court did not confront or purport to decide any issue of novelty or importance in the administration of the Act. The decision is of no general applicability.

If the case presented any general rule, which it does not, that would be only that a disclosure of employer preference in terms guaranteeing complete freedom of organizational choice does not violate the Act. Such a rule is sound and consistent with all existing decisions but in any event the instant case is not a satisfactory vehicle for its review.

2. The Point of Interference Is Plainly Ineligible for Review

The alleged anti-union action of a minor supervisor was contrary to published executive policy and could not have been reasonably accepted as anything but an individual view. The court's judgment to that effect was made in ostensible

conformity to the principles of the Heinz Case[33] and the Link-Belt Case[34] and presents no issue meriting review.

3. The Point of Reimbursing Checked-off Dues Is Not Presented

The court below did not have to face this question and did not purport to face it or decide it. If the point is of public concern, the review opportunity exists in another case presenting the issue squarely.

Argument

1. The Decision Setting Aside the Disestablishment Order Does Not Present Any Question That Should Be Reviewed By This Court.

The court below was never informed by the Board that rejection of the order would have the sinister consequences now asserted in the Petition. Nor has the Board told the court even yet that the decision legalizes subtlety as a universal exemption from the Act. And if the Board had, as if by a petition for rehearing, that court would have been the first to reject such a caricature of its opinion.

On the contrary, the court below, one of the first to recognize the fact-finding prerogatives of the expert administrative agency,[35] made, consistently with those prerogatives, a patient survey of all the concrete circumstances of the

---

[33] *H. J. Heinz Co.* v. *N. L. R. B.*, January 6, 1941, No. 73, this Term, 85 L. ed. 303.

[34] *N. L. R. B.* v. *Link-Belt Co.*, January 6, 1941, Nos. 235 and 236, this Term; 85 L. ed. 325.

[35] *Appalachian Electric Power Co.* v. *N. L. R. B.*, 1938, 93 F. (2d) 985, cited with approval in *Consolidated Edison Co.* v. *N. L. R. B.*, 1938, 305 U. S. 197, 229, and *N. L. R. B.* v. *Columbian Enameling & Stamping Co.*, 1939, 306 U. S. 292, 300.

episode in issue and rested its decision squarely on the conclusion that in fact there had been no partisanship, interference or assistance. A brief review will show the main bases for the decision.

This is not a case where "a company union" had been maintained, as in the Link-Belt Case[36] relied on in the Petition; indeed there is no claim whatever to that effect. Nor is there any claim, as in the Link-Belt Case and the Heinz Case,[37] of membership solicitation by supervisors. Nor is this a case of "failure of the employer to wipe the slate clean and announce that the employees had a free choice," as in the Link-Belt Case, or an instance where an employer, upon notice of supervisory interference, "took no step . . . to notify the employees" that such interference was unauthorized, as in the Heinz Case. On the contrary, the April 26th bulletin proclaimed throughout the properties "the right of every employee to join any union that he may wish to join and such membership will not affect his position with the Company." [38] Later the May 24th addresses made it "perfectly clear . . . that no employee will be discriminated against because of any labor affiliation he desires to make." [39] Finally, the June 24th bulletin[40] announced that:

> "Employees of Virginia Electric and Power Company have a right to self-organization, to form, join or assist labor organizations and to bargain collectively through representatives of their own choosing, and the

---

[36] *Supra*, note 34.

[37] *Supra*, note 33.

[38] P. A. I, 15-16, 52; Bd. Ex. 3.

[39] P. A. I, 18-19, 58-62, 263-266, 381-382, 514-515; P. A. II, 882; Bd. Ex. 4.

[40] P. A. I, 483-484; Resp. Ex. 7; P. A. II, 993; and *supra*, note 13.

> Company has not sought and does not seek to dominate or interfere with employees in the exercise of any of their rights, individually or collectively."

As the testimony subsequently revealed, this June 24th bulletin came precisely in the middle of the I. O. E. membership campaign[41].

In all these essential qualifications, the instant case differs completely from the Heinz Case and the Link-Belt Case on which the Petition is chiefly rested. What then are the bases for the claim that the case presents a question of public importance in the administration of the Act wherein the court below has departed from rules established by this Court?

Surely not in the asserted evidence that, prior to the passage of the Act, the Company had been opposed to union affiliations, for no court has held that the Act purports to punish an antecedent state of mind as such unless followed by conduct, or at least inaction amounting to acquiescence, after the enactment of the Act. Nor does the public importance here asserted depend upon the 1936 inquiries by a minor Norfolk transportation supervisor, which are not shown to have had any effect of any nature and as to which the Petition does not ask review[42].

---

[41] Solicitation of membership began about June 18th (P. A. II, 731-732, 771-772, 824-825, 848-849); and by July 2nd the I. O. E. had a majority membership (P. A. I, 23; P. A. II, 821, 878-879).

[42] Surely the Petition can not deliberately invoke consideration by this Court on the misstatement that a "full time labor spy" (Petition, p. 6) was employed by the Company. The uncontradicted evidence proves that this man was engaged to advise the Company on all matters of public concern (R. A., 16-17, 20, 26-27); only one report made by him on labor matters was ever mentioned (P. A. I, 14); he died before the events here in issue and was not replaced (B. A., 5; R. A., 2); and he is referred to by the Board only in a footnote (P. A. I, 14).

The only other circumstances which were emphasized to the court below as tending to sustain the order of the Board were (1) the tenor of the April 26th and May 24th communications, (2) the discharge of a Norfolk transportation operator, Mann, and (3) certain casual uses of Company property. Each of these claims was carefully and sympathetically reviewed by the court below:

(1) The use of Company property, the court concluded, whether by meetings, solicitation, notices or communication (Pro. 30 and 33), was, in the light of its nature, its limited extent and the specific surrounding circumstances, without any implication of "favoritism or interference" and was thus powerless to indicate that in fact free expression of view or free choice of bargaining agency "was in any wise affected thereby" (Pro. 34):

> "It is only as they tend to establish such interference that such circumstances have any significance. In many cases, of course, they are very significant; but where the limited use of Company property and facilities here shown is judged in the light of the record, we do not think that it constitutes any substantial evidence upon which a finding of interference or domination could be predicated" (Pro. 34).

The soundness of this standard can not be a matter of substantial question, for the public operation of the Act is not to be constrained in any formalistic ritual. Even if the court's careful and orderly application of that standard to the facts of the instant case were mistaken, which it is not, that would not be a departure from prior decisions of this Court, or raise any novel question calling for clarification in the public interest or have any general implication or applicability beyond the specific circumstances of the unique episode here concerned.

(2) In the court below, as in the Petition, the discharge of a conspicuously inefficient employee, Mann, for intolerable impertinence[43], was magnified into some semblance of relationship with the issue of domination, as if the Company had undertaken to scatter the ranks of its employees by striking down their brightest spirit. This colored argumentative claim was properly held by the court below to be preposterous, as being "pure speculation, unsupported by anything in the evidence" and incredible upon the record (Pro. 34). Since the Petition does not ask review on the ground of that decision, it may not properly urge review except upon the basis that that conclusion was correct. In any case the question of its correctness is purely routine, presenting no novel point and devoid of general significance in the administration of the Act.

(3) The only other major claim in the court below is that the tenor of the April 26th and May 24th communications effectively foreclosed free employee choice.

(a) Here again the court did not purport to say that subtle documents may qualify by lip service to the Act although actually shaping employee choice. The communications were not viewed in the slanting rays of any such mediæval canon. On the contrary, the words of each were realistically scrutinized in the three dimensions of their historical setting and the court concluded that "no hostility towards any outside union was manifested" (Pro. 31), that there was no indication of any "desire that the organization to be set up by the employees be not affiliated with an outside organization" (id.), but on the contrary that:

> "the employees were expressly assured that the Company was willing to bargain with them in any manner

[43] P. A. I, 391-395, 430-433; P. A. II, 912-916; Resp. Ex. 19d.

> satisfactory to the majority, that no employee would be discriminated against because of labor affiliations and that the Company was prohibited by law from dominating or interfering with the formation or administration of any labor organization or contributing financial or other support to it" (Pro. 31).

Here again, the court below meets the Board on the essential merits of the case and holds that the actual words in their actual setting fully safeguarded absolute liberty of choice, in the normal meaning of those words and without invoking any special interpretative standard as to the intentions of the Act. Even if that conclusion were erroneous, which it is not, it would constitute only an appraisal of a particular document in a unique circumstantial situation, which could not have any general potential applicability or otherwise be of any general importance in the future administration of the Act.

The decision, therefore, is, in its own words, a conclusion that "in the light of the surrounding circumstances shown by the record" (Pro. 30) and upon the basis of "the surrounding circumstances" (Pro. 31), "the facts here" (Pro. 33) and "these circumstances" and (Pro. 34) "in the light of the record" (Pro. 34),

> ". . . there is nothing to show that the employees' association does not represent the free choice of the employees, that the Company at any time dominated or in any way interfered with the employees in setting it up or that the company exercised over it any control or domination whatever" (Pro. 25).

With that as a standard, the Petition can have no quarrel. It misinterprets the opinion when asserting it to rest on a passing comment by the court that an employee impression

from prior events that the Company preferred an unaffiliated union could not constitute a violation of the Act (Pro. 31-32). The comment, in itself unassailably sound, was in no sense a premise for the court's conclusion and has moreover been intrinsically misunderstood in the Petition.

(b) The May 24th address being in fact, as the court found, neutral, the decision in that respect can present no issue of general importance. Even if that were not true, however, the only general rule that it could present would be that a disclosure of employer preference, when made under circumstances guaranteeing complete freedom of organizational choice, is not a violation of the Act. Such a rule is sound, is consistent with decisions in other circuits[44] and decisions of this Court[45] and is not contrary to any holding. As such, the point does not call for review. And even if the point, cleanly presented, were an appealing subject for consideration, nevertheless it is not so presented in this case, but at most only by strained inference and conjecture, so that the instant case would not be a satisfactory vehicle for any clarification of the law. Other cases have presented the issue in undeniable form, as in the Ford Case, where the Board did not ask for certiorari to review a

---

[44] *N. L. R. B.* v. *Ford Motor Co.*, 1940, C. C. A. 6, 114 F. (2d) 905; *Jefferson Electric Co.* v. *N. L. R. B.*, 1939, C. C. A. 7, 102 F. (2d) 949; *N. L. R. B.* v. *International Shoe Co.*, 1940, C. C. A. 8, 116 F. (2d) 31; *N. L. R. B.* v. *Union Pacific Stages, Inc.*, 1938, C. C. A. 9, 99 F. (2d) 153, 178.

[45] *N. L. R. B.* v. *Express Publishing Co.*, March 3, 1941, No. 442, this Term, where a majority of the Court held that "there was no basis for any order by the Board" in employer statements that "no one can compel you to join any organization" and that, in respect of the employer's treatment of its employees, "no labor organization can force us to do these things." See also *Consolidated Edison Co.* v. *N. L. R. B.*, 1938, 305 U. S. 197, 230.

decision that explosive disclosures of employer preference were not in violation of the Act.

(c) The Circuit Court of Appeals for the Fourth Circuit is not engaged in some new design to frustrate the policies of the Act, and the individual limitations of the instant case can not be widened by reference to other decisions which the Board did not deem worthy of certiorari: *L. Greif & Bro.* v. *N. L. R. B.*, 1939, 108 F. (2d) 551, where a communication of employer preference with employee liberty was held not a violation of the Act; *N. L. R. B.* v. *Mathieson Alkali Works*, 1940, 114 F. (2d) 796, where the court, consistently with the standards later laid down in the Heinz Case, held that an employer may be liable for unauthorized conduct of minor supervisors "if the surrounding circumstances are such as reasonably to justify the inference that it is an expression of the employer's policy or is approved by the employer," but not if the statement of a minor supervisor "appears to be nothing more than an expression of ideas of his own, contrary to the neutral policy assumed by the employer" (803); and *E. I. du Pont de Nemours & Co.* v. *N. L. R. B.*, 1940, 116 F. (2d) 388, where the court held that a disestablishment of an admitted "company union" was complete where proclaimed by a statement of company policy "to comply in the fullest sense with this Act," quoting the Act and adding that "there will be no discrimination, interference, restraint or coercion by the Company or any of its representatives against any employee because of membership or non-membership in any labor union." While those decisions appear sound in themselves, they involve differing facts and issues, show no single plan to enervate the Act and certainly communicate no gregarious importance to the solitary limitations of the case at bar. The court below has been alert to sustain orders of the Board wherever possible upon the record presented: *e. g.*, *N. L. R. B.* v.

American Oil Co., Inc., 1940, 114 F. (2d) 1009, enforcing 14 N. L. R. B. 990; *N. L. R. B.* v. *Highland Park Mfg. Co.*, 1940, 110 F. (2d) 632, enforcing 12 N. L. R. B. 1238; *Virginia Ferry Corp. v. N. L. R. B.*, 1939, 101 F. (2d) 103, enforcing 8 N. L. R. B. 770; *N. L. R. B.* v. *J. Freezer & Son, Inc.*, 1938, 95 F. (2d) 840, enforcing 3 N. L. R. B. 120.

(d) In summary, therefore, the cited cases are inapposite and the only conceivable general rule from the decision below, while in itself sound and consistent with all existing decisions, was not actually presented and the court below expressly so concluded. To assert, as the Petition does, that the decision gives some special passport to subtlety, although illegalizing frankness, is contradicted by the text of the opinion. Not only indeed by the text of the opinion but by the record of the court itself, which is known to put substance above form and actuality above costume, whether that rule in particular cases may work for or against the wishes of any particular litigant.

2. The Point of Interference Is Plainly Ineligible For Review

On the issue of interference, the Petition asks review only on the question whether "anti-union threats and surveillance of union meetings" by one minor supervisory employee in the Norfolk transportation department can support, in the circumstances of the instant case, a cease and desist order.

This is plainly a make-weight. This Honorable Court has clearly declared in the Machinists' Case,[46], the Heinz Case,[47]

---

[46] *International Association of Machinists* v. *N. L. R. B.*, 1940, 311 U. S. 72.

[47] *Supra*, note 33.

and the Link-Belt Case[48] that actual authorization or approval is not a condition precedent to an order to prevent repetition of supervisory interference where the employer has failed to communicate its claimed neutrality to the employees or, with knowledge of supervisory interference, failed to repudiate it to the employees. The rule is thus now clear and had indeed been already recognized by the court below before those decisions (*N. L. R. B.* v. *Mathieson Alkali Works*, 1940, 114 F. (2d), 796, 799, 802-3). The decision here is manifestly consistent with that rule. Such action by one isolated man, of negligible authority, in a system of 3,500 employees, which was never brought to the Company's attention until after the filing of the complaint,[49] which was directly contrary to the shortly preceding executive bulletin of April 26th, the nearly contemporaneous executive address of May 24th and the later executive bulletin of June 24th, which was not shown to have had any actual effect of any kind on any employee and which was affirmatively shown to have had no effect on those employees who testified concerning it,[50] could not be deemed significant. And if it could, upon debate, the general administration of the Act would hardly be disturbed by the adjudication.

3. The Point of Reimbursing Checked-off Dues Is Not Presented

Here the Petition asks review on the ground that it is of public importance to determine whether, upon a disestab-

---

[48] *Supra*, note 34.

[49] P. A. I, 269, 370, 447, 455, 460, 463-465 and 502. The 3,500 figure includes supervisory employees.

[50] P. A. I, 167-169, 180-181.

lishment order, the Board may require an employer to refund all dues theretofore checked off and paid to the delinquent union.

The Board's sense of the magnitude of this issue comes newly for it has failed to ask certiorari for any of the numerous decisions adverse to it on this point[51] and in another recent case consented to the elimination of such a provision from its order which was in other respects enforced.[52]

But whether or not the point is one of public concern, it is not suitably presented in this case. The court below did not decide that question or conceive (Pro. 24) that the question was presented for decision. In fact, due to the court's disposition of the other issues, the question was not presented for decision. The court below, moreover, has not in any case held that the Board is without authority to include such a provision in an order otherwise within its power.

In any event, the point is squarely presented in another case, in which the time for requesting certiorari has not expired (*A. E. Staley Mfg. Co.* v. *N. L. R. B.*, *supra*, note 51).

---

[51] See Petition, pp. 27-28; and: *C. C. A. 2, Western Union Telegraph Co.* v. *N. L. R. B.*, August 9, 1940, 113 F. (2d) 992, 997-998; *C. C. A. 6, N. L. R. B.* v. *West Kentucky Coal Co.*, November 15, 1940, 116 F. (2d) 816; *C. C. A. 7, A. E. Staley Mfg. Co.* v. *N. L. R. B.*, January 30, 1941, opinion on proposed decree, C. C. H. Labor Law Service, Par. 60,277, in conformity with opinion of November 14, 1940, C. C. H. Labor Law Service, Par. 60,135; *C. C. A. 7, N. L. R. B.* v. *Greenebaum Tanning Co.*, March 22, 1940, 110 F. (2d) 984, 988-989, cert. den., No. 152, this Term (on petition by company); *C. C. A. 8, Kansas City Power & Light Co.* v. *N. L. R. B.*, April 25, 1940, 111 F. (2d) 340, 348.

[52] *N. L. R. B.* v. *Hughes Tool Co.*, C. C. A. 5, Nov. 26, 1940, unreported, enforcing 27 N. L. R. B., No. 145.

Conclusion

The Petition presents no matter of novelty or importance in the administration of the Act; the decision below does not conflict with prior decisions of this Court or other decisions in other circuits. The Petition should be denied.

Respectfully submitted,

VIRGINIA ELECTRIC AND POWER COMPANY,
By

T. JUSTIN MOORE,
GEORGE D. GIBSON,
STEPHEN H. SIMES,
Electric Building,
Richmond, Virginia,
Counsel for Respondent.

HUNTON, WILLIAMS, ANDERSON,
GAY & MOORE,
Of Counsel.

March 17, 1941.

FILE COPY

Office - Supreme Court, U. S.
FILED
NOV 4 1941
CHARLES ELMORE CROPLEY
CLERK

No. 25

IN THE

Supreme Court of the United States

October Term, 1941

NATIONAL LABOR RELATIONS BOARD
Petitioner

v.

VIRGINIA ELECTRIC AND POWER COMPANY

On Writ of Certiorari to
The United States Circuit Court of Appeals
For the Fourth Circuit

BRIEF FOR VIRGINIA ELECTRIC AND POWER COMPANY

T. JUSTIN MOORE
GEORGE D. GIBSON
Counsel for Respondent

Office and Post Office Address:
Electric Building
Richmond, Virginia

HUNTON, WILLIAMS,
ANDERSON, GAY & MOORE,
Of Counsel

Dated November 3, 1941

PRINTED BY *Lewis Printing Co.*, RICHMOND, VA.

Table of Contents

	Page
OPINIONS BELOW	1
JURISDICTION	1
STATUTE INVOLVED	1
QUESTIONS PRESENTED	1
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	3
ARGUMENT	5
A. The Issue of Domination	5
1. *The Issue Defined*	5
2. *So-Called Background*	6
3. *Declarations By Management*	10
(a) The Bulletin of April 26, 1937	10
(b) The Meetings of May 24, 1937	15
4. *The Board's Findings as to the April 26th Bulletin and the May 24th Meetings are Contrary to the Intention of the Act and the Requirements of the Constitution*	26
(a) The Act	26
(b) The Constitution	34
5. *Organization of the Independent*	37
(a) Position of Management	37
(b) Employee Meetings, May 25-June 1st	40
(1) NORFOLK	40
(i) Distribution Department	40
(ii) Generating Department	41

Page

(iii) Transportation Department 42
(iv) June 1st Meeting of all Departments 43
(2) RICHMOND 43
(i) Distribution Department 43
(ii) Generating Department 44
(iii) Transportation Department 44
(iv) June 1st Meeting of all Departments 45
(c) Joint Meeting at Petersburg on June 3rd 46
(d) Further Consideration of Plans 47
(e) Creation of the Independent 48
(f) First Elections 49
(g) Formulation of Demands by the Independent 50
(h) Negotiation of Contract with the Independent 51
(i) Execution of Contract 54
(j) Susequent History 55
(k) Authenticity of the Independent 57

6. *Treatment of the Independent by the Board* 59
(a) The Claim of Initial Impetus 60
(b) The Calendar 61
(c) Company Property 62
(d) Closed Shop and Check-Off 68
(e) Conclusion 69

7. *Other Claims of Interference* 70

B. THE ISSUE OF DISCRIMINATORY DISCHARGES 73

1. *Transportation Department* 73
(a) Mann 74
(b) Elliott 79

2. *Electric Department* 81
(a) Staunton 81

Page

(b) Harrell 82

3. *Conclusion* 88

C. THE FORM OF THE ORDER 89

1. *The Disestablishment Requirement* 90

2. *Reimbursement of Checked-Off Dues* 91

3. *Notice of Privilege to Organize or Join a New Unaffiliated Union* 94

4. *Modifications Accepted by the Board* 96

CONCLUSION 96

APPENDIX 98

Table of Cases Cited

Page

American Enka Corp. v. N. L. R. B., 1941, CCA 4, 119 F. (2d) 60 29

Appalachian Electric Power Co. v. National Labor Relations Board, 4 Cir., 93 F. (2d) 985 88

Ballston-Stillwater Knitting Co. v. N. L. R. B., 1938, 98 F. (2d) 758, 762 30

Bratton v. Chandler, 1922, 260 U. S. 110 36

Carlson v. California, 1940, 310 U. S. 106 35

Case v. Los Angeles Lumber Products Co., 1939, 308 U. S. 106 27

Chesapeake & Ohio R. Co. v. Martin, 283 U. S. 209, 51 S. Ct. 453, 75 L. Ed. 983 89

Consolidated Edison Co. v. N. L. R. B., 1938, 305 U. S. 197, 235-6 91

Corning Glass Works v. N. L. R. B., 1941, CCA 2, 118 F. (2d) 625 91

Cudahy Packing Co. v. N. L. R. B., 1939, CCA 8, 102 F. (2d) 745, 753 95

Cupples Co. Manufacturers v. N. L. R. B., 1939, CCA 8, 106 F. (2d) 100, 114 62

Diamond T Motor Car Co. v. N. L. R. B., 1941, 119 F. (2d) 978, 982 32

L. Greif & Bro. Inc. v. N. L. R. B., 1939, 108 F. (2d) 551 29, 55

Hamilton Brown Shoe Co. v. N. L. R. B., 1939, 104 F. (2d) 49 95

Humble Oil and Refining Co. v. N. L. R. B., 1940, CCA 5, 113 F. (2d) 85, 92 90

Jefferson Electric Co. v. N. L. R. B., 1939, 102 F. (2d) 949, 956 31

Kansas City Power & Light Co. v. N. L. R. B., 1940, CCA 8, 111 F. (2d) 340, 348 93

Midland Steel Products Co. v. N. L. R. B., 1940, 113 F. (2d) 800 30, 35

N. L. R. B. v. A. S. Abell Co., 1938, 97 F. (2d) 951, 957 62, 91

N. L. R. B. v. Arma Corporation, 1941, CCA 2, 122 F. (2d) 153, 157 91

N. L. R. B. v. Blossom Products Corporation, 1941, 121 F. (2d) 260, 261 30, 95

Page

N. L. R. B. v. Clarksburg Publishing Co.,
1941, 120 F. (2d) 976, 979 30

National Labor Relations Board v. Columbian Enameling & Stamping Co., 306 U. S. 292, 59 S. Ct., 501, 83 L. Ed. 660 88

N. L. R. B. v. Elkland Leather Co., 1940, CCA 3, 114 F. (2d) 221 30

N. L. R. B. v. Express Publishing Co.,
1941, 312 U. S. 426, 438-439 96

N. L. R. B. v. Fansteel Metallurgical Corp.,
1939, 306 U. S. 240, 253-258 81

N. L. R. B. v. Federal Bearings Co., 1940, CCA 2, 109 F. (2d) 945 80

N. L. R. B. v. Federbush Co., Inc.
1941, CCA 2, 121 F. (2d) 954, 956 36

N. L. R. B. v. Ford Motor Co.,
1940, 114 F. (2d) 905, cert. denied, 1941, 312 U. S. 689 ..... 30, 36

N. L. R. B. v. J. Greenebaum Tanning Co.,
1940, CCA 7, 110 F. (2d) 984, 988 94

N. L. R. B. v. Gutmann & Co., 1941, 121 F. (2d) 756 32

N. L. R. B. v. Link-Belt Co.,
1941, 311 U. S. 584 ..... 4, 33, 73, 77

N. L. R. B. v. Lion Shoe Co.,
1938, CCA 1, 97 F. (2d) 448, 457 79

N. L. R. B. v. Moore-Lowry Flour Mills Co.,
1941, CCA 10, 122 F. (2d) 419, 429 95

N. L. R. B. v. National Motor Bearing Co.,
1939, C. C. A. 9, 105 F. (2d) 652, 657 70

N. L. R. B. v. New Era Die Co.,
1941, CCA 3, 118 F. (2d) 500, 505 36

N. L. R. B. v. Reed & Prince Mfg. Co.,
1941, CCA 1, 118 F. (2d) 874, 889 36

N. L. R. B. v. Swank Products,
1939, C. C. A. 3, 108 F. (2d) 872, 875-6 70

N. L. R. B. v. Tex-O-Kan F. Mills Co.,
1941, CCA 5, 122 F. (2d) 433, 438 89

N. L. R. B. v. Union Pacific Stages, Inc.,
1938, 99 F. (2d) 153, 178 ..... 32, 35

Page

N. L. R. B. v. West Kentucky Coal Co., 1940, 116 F. (2d) 816, 822-823 92

Panama Railroad Co. v. Johnson, 1924, 264 U. S. 375 36

Pennsylvania R.R. Co. v. Chamberlain, 288 U. S. 333, 53 S. Ct. 391, 77 L. Ed. 819 89

Press Co. v. N. L. R. B., 1941, 118 F. (2d) 937, 942 33

Republic Steel Corp. v. N. L. R. B., 1940, 311 U. S. 7 ..... 4. 91, 96

Roebling Employees Ass'n, Inc. v. N. L. R. B., 1941, 120 F. (2d) 289 95

Schneider v. State, 1939, 308 U. S. 147, 160 35

A. E. Staley Mfg. Co. v. N. L. R. B., 1941, CCA 7, 117 F. (2d) 868, 875 62

System Federation No. 40 v. Virginian Railway Co., 1935, E. D. Va., 11 F. Supp. 621, 624-5 29

Texas v. East Texas R. R. Co., 1922, 258 U. S. 204 36

Texas & New Orleans R. Co. v. Railway Clerks, 1930, 281 U. S. 548, 568 ..... 3, 27, 36

Thornhill v. Alabama, 1940, 310 U. S. 88 35

U. S. v. Delaware and Hudson Co., 1909, 213 U. S. 366 36

U. S. v. Standard Brewery, 1920, 251 U. S. 210 36

Virginia v. Tennessee, 148 U. S. 503, 519 27

Virginian Railway Co. v. System Federation No. 40, 1936, 84 F. (2d) 641, 644, affirmed 1937 300 U. S. 515 29

Western Union Telegraph Co. v. N. L. R. B., 1940, 113 F. (2d) 992, 997 92

Westinghouse Electric & Mfg. Co. v. N. L. R. B., 1940, CCA 2, 112 F. (2d) 657, 661 95

Statutes Cited

Page

Bankruptcy Act
Section 77 B 27

Judicial Code, §240(a) as amended 28 USCA, §347(a) 1

National Labor Relations Act, 49 Stat. 449, 29 USCA, §§151-166
Section 1 95
Section 2(5) 95
Section 7 ..... 4, 9, 15, 20, 70, 73
Section 8(1) 2, 4, 15, 70, 90
Section 8(2) 1, 4, 5, 13, 15, 70, 73, 90
Section 8(3) 2, 15, 79, 81
Section 9(a) 13
Section 10(a) 15
Section 10(c) 91
Section 10(e) 1

Railway Labor Act, 44 Stat. 577, 45 USCA, §§151-163
Section 2 28

Other Authorities

Bill of Rights Review, 1940, vol. 1, p. 46 36

BRIEF FOR VIRGINIA ELECTRIC AND POWER COMPANY

Opinions Below

The opinion of the Circuit Court of Appeals (R. 1005-19) is reported in 115 F. (2d) 414. The decision of the Board (R. 952-80) is reported in 20 N. L. R. B. 911.

Jurisdiction

The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code as amended by the act of February 13, 1925 (28 U. S. C. A., 347 (a)) and upon Section 10 (e) and (f) of the National Labor Relations Act (hereinafter called the Act).

The decree under review of the Circuit Court of Appeals, entered on November 12, 1940 (R. 1019-20), set aside an order of the National Labor Relations Board (hereinafter called the Board) against Virginia Electric and Power Company (hereinafter called the company), such proceeding having been instituted by a petition of the company to set aside and an answer of the Board asking enforcement. Certiorari was granted on March 31, 1941 (R. 1022-3).

Statute Involved

Pertinent provisions of the Act are set out in the Appendix to the Board's brief, pp. 60-62.

Questions Presented

The basic questions presented are:

1. Whether there is adequate evidence and basis in law to support the Board's finding of domination, etc. in violation of Section 8(2) of the Act.

2. Whether there is adequate evidence and basis in law to support the Board's finding of intimidation in violation of Section 8(1).

3. Whether there is adequate evidence to support a finding of discriminatory discharge of four employees in violation of Section 8(3).

4. Whether two of such former employees are disentitled to reinstatement on additional grounds.

5. Whether the Board's order, if resting on adequate evidence and basis in law, is in all its remedial forms within the Board's power or whether modifications must be made, including elimination of the requirement for disestablishment and the requirement to reimburse employees for all union dues deducted from wages pursuant to their individual assignments and the check-off provision of a union agreement.

Statement of the Case

The Board answered questions 1, 2 and 3 above in the affirmative and question 4 in the negative. The court below held that there was no basis for such findings by the Board on questions 1, 2 and 3 and that each of such questions could be answered only in the negative. It therefore set aside the Board's order in its entirety. Accordingly it did not have occasion to consider, and did not consider, questions 4 and 5 above.

The brief for the Board condenses the case into terms of ultimate conclusions and does not present to the Court any living view of the record. This is unfortunate where a basic issue is the sufficiency of the evidence to sustain the Board's conclusions. A mingling of important with unimportant events upon a common basis further adds to the possibilities

of confusion. This is not repaired by frequent repetition of the resulting summary.

So a further summary of the facts will be needed to correct the inaccuracies and omissions in the Board's brief. Since such summary relates to the merits of the case, it will be made under the Argument below.

Summary of Argument

On the issues above noted, the company's position is to the following effect:

1. There is no basis in fact or law for any finding of domination or support of the Independent Organization of Employees (hereinafter referred to as the Independent) by the company; on the contrary, the evidence clearly requires the conclusion that the Independent is a labor organization spontaneously created by the free choice of the employees and is their lawful collective bargaining agency. The Board's order for disestablishment (including the related requirements to cease recognition of the Independent and its contract) was therefore properly set aside by the court below.

(a) The declarations by management on April 26, 1937 and May 24, 1937 were wholly non-partisan and could not restrain organizational choice (A, 3 below).

(b) Even if such declarations had implied a preference by management as between organizational forms, they nevertheless unequivocally declared complete liberty of organizational choice and freedom from any resulting discrimination, so they are insufficient for a violation of the Act, both as a matter of statutory construction (*Texas & New Orleans R. Co.* v. *Railway Clerks*, 1930, 281 U. S. 548) and as a matter of constitutional privilege of free speech (A, 4 below).

(c) The Independent was organized and administered by free choice and strictly independent action of the em-

ployees themselves, without aid or support by the company (A, 5 below).

(d) Uses of company property were unauthorized, incidental and insufficient to imply management support or involve any violation of the Act (A, 6(c) below).

(e) The background and miscellaneous incidents relied on by the Board are unimportant and could not have had any actual influence on the motives of the men, particularly after the management declarations of April 26th, May 24th and June 24th, and in the light of such announcements the employer is not fairly responsible for such incidents (*N. L. R. B.* v. *Link-Belt Co.*, 1941, 311 U. S. 584, 599) (A, 1, 2 and 7 below).

2. There is no basis in fact or law for a finding of interference with free organizational choice under Section 7, and the Board's order in this respect was therefore properly set aside by the court below (A 2, 6 and 7 below).

3. There is no basis for a finding of discriminatory discharge and therefore no basis for any reinstatement order and in any case a reinstatement order is barred as to two of the men by unlawful conduct and voluntary resignation respectively (B, below).

4. Even if the Board's order were competent and enforceable, nevertheless its provisions exceed the Board's power in circumstances like those here and thus should in any event be modified, including elimination of the disestablishment requirement unless a finding of violation of Section 8(2) was permissible and in any event elimination of the requirement for reimbursement of all checked-off dues (*Republic Steel Corp.* v. *N. L. R. B.*, 1941, 311 U. S. 7) (C, below).

Since the claim of intimidation contrary to Section 8(1) and Section 7 is made only as an incident to the major issue

of domination contrary to Section 8(2), those two issues will be considered together. Thus the argument will proceed in three parts: (1) the question of domination (including the claim of intimidation), (2) the question of discriminatory discharge and (3) the question of the form of the order. Should the position of the court below on the first two of such parts be sustained, there will of course be no occasion to consider the third.

ARGUMENT

A.
THE ISSUE OF DOMINATION

1. The Issue Defined

The Board makes no claim that the Independent falls short in any degree of militant representation of its members' interests; that there is anything objectionable in its constitution or by-laws, the contract made between it and the company or the manner in which such contract was negotiated; or that the company contributes any support to the Independent or dominates it in any way or interferes in any way with the control exercised over it by its members (Board's Brief, *passim;* and [illegible] R. 1012). The whole claim of the Board rests on ev[illegible] the formative period of the Independent, during the [illegible] of approximately four months preceding September, 1937. That period accordingly delimits the issue.

Within that period itself the main events are easily identified and it is on that sequence that the merits of the case depend. The Board's brief, however, does not tell that history in any proper perspective. Attention is diverted from the central theme to incidental events that were of no real importance in characterizing the atmosphere or the motives of the time.

A reestablishment of the basic events in their natural

colors and proportions is therefore the first step toward a determination of the case on its merits.

2. So-Called Background

The Board may of course resort to background for perspective, but it may not convict on background alone, nor is it entitled to substitute a formalistic composite of scattered background incidents for the plain and notorious events that determine an episode. The Board's Decision and brief transgress those limits.

Thus the Board mentions (Decision, R. 959, Brief, p. 4) a strike in 1922 because of the company's refusal to renew an agreement. The Board does not mention, however, the reasons for such refusal, or the nature of such refusal or the merits of the issue; indeed those matters are not shown by the record. Nor does the Board mention a sale of virtually all the common stock of the company in 1925 to one new controlling interest and a resulting change of management (R. 315). Whatever may be the unknown merits or demerits of 1922, they can not be relevant now.

The Board repeatedly mentions (Decision, R. 959, Brief, pp. 4, 9, 14, 29) an NRA speech by the company's president. The Board chooses to summarize by the statement that organization "is entirely unnecessary." This was of course said, but the speech also declared that pursuant to law, which the company intended to obey, "employees shall have the right to organize and bargain collectively through representatives of their own choosing," "employees shall be free from interference, restraint or coercion of employers in the exercise of their rights established by the law" and "employees shall have the right to organize in any form of organization which they see fit to join" (R. 885-6). But that side of the speech the Board does not choose to mention. Its summary is not fair and the whole event is irrelevant, being about four years before the events here in issue and not

shown to have any relation thereto or to have left any surviving impression on the mind of any one.

The inaccurate nature of the Board's summary is aggravated by its assertion (Brief p. 14) that "there never was any modification made" in this company policy. The reason for that statement is omitted by the Board although given in the same passage in the record; Mr. Holtzclaw, the company's president, testified that he had recognized ever since the NRA "that the employees were to be free from any interference or coercion or undue influence of any kind on that subject" and had made every effort to make it plain to management and employees that that was the case (R. 430). The impression intended by the Board's fragmentary quotation is, moreover, directly opposed to the unquestioned testimony of Mr. Holtzclaw that

> ". . . the N. R. A. was a very mild thing as compared with the Wagner Labor Relations Act . . .
> "Our policy today is a far more 'hands off' policy as to labor than it was in 1933" (R. 465).

The Board's brief gives much emphasis to "a labor spy" employed by the Company (Brief, pp. 4, 9, 14 and 29). But this specter shrinks with any examination of the record; he was only mentioned in a footnote in the Board's Decision (Note 10, Decision, R. 960). This man (Walters) originally came to the company as a "checker" (one who, as a well recognized and universally used service, travels on trolleys and buses to observe fare accounting by operators) and remained in that capacity. Later his duties were enlarged to include giving the company information on any and all matters that might be of importance to its business; thus notably, information in regard to unlicensed "jitney" operators at a time when the bus transport system in Norfolk was in great disorder. Labor conditions were by no means the primary task of Walters; on the contrary, "He made very few

reports on labor" (R. 399) and in fact only one is referred to in the record (in 1933, R. 399). The evidence does not show that the employment of Walters was known or suspected by any of the employees except one (R. 76), so there is no basis for any inference that such employment had any significant influence on the men. On the other hand, the evidence does show that Walters never made any report to the company on any labor question after the enactment of the Act, became fatally ill before any of the events here in question (i. e., in March, 1937), never got out of bed again, was discharged near the end of May and died soon afterwards*. None of the facts in this paragraph is opposed or questioned by any of the Board's findings.

With the same technique the Board's brief attempts to use one other isolated and obscure event as supplying a general atmosphere throughout the system. In one city out of the many communities served and in one department of the various operations, the Board says that one supervisory employee (Bishop) once questioned several men in 1936 in respect of organizational activities (Decision, R. 960, Board's Brief, pp. 4, 9, 12, 14-15, 29). Even within this compass the Board somewhat exaggerates. Mr. Bishop did not admit, as the Board asserts (Decision, R. 960), that he questioned about fifteen of the respondent's employees but that he "called in several fellows and asked if they knew anything about it and they said they did not" (R. 400). The whole

* R. 56-59, 326-327, 331-334, 371-372, 399-402, 444, 462. A company witness, Mr. Jones, first thought that there had been a report from Walters in March of 1937, relating to the visit of an organizer, Parker, to the Reeves Avenue Station (R. 326-327); but his recollection was quite clear that he had heard of Parker's visit to Reeves Avenue by a report from the powerhouse engineer (R. 333) and Mr. Jones subsequently acknowledged that he was wholly uncertain that Walters ever made any report on the subject (R. 333-334). It is evident that Mr. Jones' first recollection was a mistake. Mr. Bishop testified that no report was made by Walters (R. 402); so did Mr. Throckmorton (R. 371-372).

episode was entangled with prolonged drinking parties by the men at a bootleg store (R. 400-401). There is no claim, either in the Board's Decision or in its brief, of any actual consequences from such questioning, in particular no claim that it deterred any one from free association with any labor group. On the contrary the court below found that "any effect of such questioning had unquestionably been dissipated" by the events hereinafter reviewed (R. 1019).*

The only other claim by the Board with respect to so-called background is the company's response to two organizational suggestions, in 1933 and 1937. Such response is stigmatized in the Board's brief as if a pervasive conviction of anti-union hostility must have emanated from the company's conduct. There is, however, no basis for any such view. The facts are that in each case the organizer was told that he was free to proceed as he desired, but not to solicit on company time and property (R. 350-351, 370-372, 428-429, 448-449, 468). The departure of the organizer in 1933 was distinctly due to the preference of the men not to join his organization (R. 448-9). The 1937 effort was apparently not a serious one, for the organizer never returned (R. 350-351, 370-372, 428-429, 449). There is no indication that either reply was felt by the organizer to be an unreasonable limitation or that either reply ever became known to any of the men; indeed the company's purpose in making such replies was to show that the men were free to do what they wanted (R. 430).

It is not in slender and scattered incidents of this character that there may be reasonably found any manifestation of employer attitude sufficiently distinct to create a general atmosphere of the time or to impair in any way full freedom of choice on the part of the men. On the contrary it would

---

* The Board's brief does not assert error on the part of the court below in this respect (Brief, pp. 2-3). The episode is not within the issues of the complaint (Board Ex. 1, R. 9-13), which spoke only of alleged Section 7 violations "at various times since January 1, 1937."

seem that the very paucity of the incidents so industriously exploited by the Board is, for a company employing some 3500 men and operating through a large area in tidewater Virginia and northeastern North Carolina, proof of recognition of the employees' organizational liberty.

In any case these are mere decorations with which the Board seeks to impose a predetermined look on the sequence of events dealt with below, though the latter are by general admission manifestly determinative of the case.

3. Declarations By Management

(a) The Bulletin of April 26, 1937

The early months of 1937 were a time of general preoccupation and concern with questions of labor organization. The subject was confused by the declared opposition of certain industries, the violence in certain areas and the implicit claims of certain labor representatives that enrollment in some union was indispensable.*

This general preoccupation was brought to a focus by two events in April, 1937. The first, of a general nature, was the decision of this Court on April 12 sustaining certain applications of the Act.** The other, particularly affecting the Company, was the statement of an organizer that he proposed to organize the electric department (page 9, above).

---

* R. 249, 271-273, 313, 343-344, 449-450 and 549.

** The Board's brief emphasizes the claim that that decision "gave no intimation to [Holtzclaw's] mind of any change in the company's policy towards labor relations whatever" (R. 429-30, Board's Brief, p. 15). The Board's brief, however, does not point out the reason for that result, stated by the same witness at the cited portion of the Record, namely, that he had "recognized ever since the NRA that the employees were to be free from any interference or coercion or undue influence of any kind on that subject" and had "made every effort to make it plain to everybody in the management and to the employees that that was so." See also page 7 above.

While there was no intimation of any dissatisfaction or of any organizational activity among the company's employees, there were numerous indications that the employees would like to know their position and that of the company on organizational matters and it seemed clear that the general preoccupation should be clarified by a distinct statement of company policy.*

Such a declaration of company policy was made by posting throughout the properties the following bulletin (R. 35):

"April 26, 1937.

To Employees of the Company:

As a result of recent national labor organization activities and the interpretation of the Wagner Labor Act by the Supreme Court, employees of companies such as ours may be approached in the near future by representatives of one or more such labor organizations to solicit their membership. Such campaigns are now being pressed in various industries and in different parts of the country and strikes and unrest have developed in many localities. For the last fifteen years this company and its employees have enjoyed a happy relationship of mutual confidence and understanding with each other, and during this period there has not been any labor organization among our employees in any department, so far as the management is aware. Under these circumstances, we feel that our employees are entitled to know certain facts and have a statement as to the Company's attitude with reference to this matter.

"The Company recognizes the right of every employee to join any union that he may wish to join, and such membership will not affect his position with the Company. On the other hand, we feel that it should be made equally clear to each employee that it is not at all necessary for him to join any labor organization, de-

* R. 55, 249-250, 271-274, 312-313, 315-316, 428-431, 449-450.

spite anything he may be told to the contrary. Certainly, there is no law which requires or is intended to compel you to pay dues to, or to join any organization.

"This Company has always dealt with its employees in full recognition of the right of every individual employee, or group of employees, to deal directly with the Company with respect to matters affecting their interests. If any of you, individually or as a group, at any time, have any matter which you wish to discuss with us, any officer or department head will be glad, as they always have been, to meet with you and discuss them frankly and fully. It is our earnest desire to straighten out in a friendly manner, as we have done in the past, whatever questions you may have in mind. It is reasonable to believe that our interests are mutual and can best be promoted through confidence and cooperation.

J. G. Holtzclaw,
President."

The Board has summarily held that the mere act of posting this bulletin interfered with, restrained and coerced the employees in the exercise of the rights created by the Act (R. 962). It reached this result by "interpreting" the bulletin as an appeal to bargain with the company without the intervention of any national union.

There is, however, no basis for any such interpretation. This document, like most others, is indigenous to its time. On April 26, 1937, the two opening sentences of the bulletin could not convey to any reasonable reader any shade of partisanship for or against the cause of national labor organization; they were merely a concise, dispassionate reference to important and obvious current conditions. The incontestible contrast between those conditions and the order and peace theretofore characterizing the company's relationships with its employees referred to in the next sentence was the whole occasion for the announcement, marking, as it did, the historical occasion for interest by the employees in the com-

pany's position. It would not have been possible to indicate this occasion more temperately.

After this introductory reference the bulletin makes three substantive statements:

> (1) "The Company recognizes the right of every employee to join any union that he may wish to join, and such membership will not affect his position with the Company."
>
> (2) ". . . it is not at all necessary for him to join any labor organization, despite anything he may be told to the contrary."
>
> (3) "If any of you, individually or as a group, at any time, have any matter which you wish to discuss with us, any officer or department head will be glad, as they always have been, to meet with you and discuss them frankly and fully."

The first of these was a distinct and unequivocal declaration of paramount organizational right. The second is an equally true and uncolored statement of immunity from compulsory organization. The third is nothing more than a statement of uniform company policy that if there were any dissatisfaction among the men, the officers would be glad to know about it and see what could be done.*

Evidence was taken at the hearing as to the purposes of the executives in publishing this bulletin. Such evidence was unequivocal and uncontradicted. Mr. Holtzclaw, president of the company, testified on cross-examination by counsel for the Board that the purpose of the bulletin was

---

*This remains lawful under the Act: ". . . any individual employee or a group of employees shall have the right at any time to present grievances to their employer" (Sec. 9a) and an "employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay" (Sec. 8 (2)).

> "to inform our employees that they could join any union that they saw fit to join, free from influence or domination by the Company; that they did not have to join any union, if they did not want to join any union, and if they wanted to talk over any matter with the Company, to come in and talk it over" (R. 450).

T. Norman Jones, vice president of the company, testified on examination by the Trial Examiner that the purpose of the bulletin and the message intended by it was to make clear to the employees that, as far as the company was concerned, they could become members of a union, or not, "as they saw fit" (R. 348).

This testimony is stated in fragmentary and misleading form in the Board's brief. After presenting only one side of the 1933 NRA speech (namely, the negative right not to join a union, although the affirmative right to join a union was also declared in the speech, see p. 6 above), it is misleading for the Board to quote Mr. Holtzclaw as saying that by the May 24th address "we simply wanted to tell our employees again just what we told them in 1933 . . ." (Board's Brief p. 18), especially when the full sentence testified by the witness was as follows (R. 430):

> "We simply wanted to tell our employees again just what we told them in 1933, that under the new law the Wagner Act, which had been declared valid by the Supreme Court, they had a right to form, join or assist in organizing any labor organization—the right to self-organization; we wanted to tell them that it was not necessary that they join any organization; third, we wanted to tell them that if they wanted to talk to us on any subject that was in their mind, they could do so."

The Board is not entitled to disregard all the qualifying circumstances that constitute the historical occasion for any utterance. Nor is it entitled to parse each phrase with

fastidious concern to see whether it would have stated the matter in precisely those terms. The Board is authorized only to determine whether as a practical matter in the light of existing circumstances the bulletin prevented full liberty of choice on the part of the men, for it is only where employers "interfere with, restrain or coerce employees in the exercise of the rights . . . to self-organization, to form, join or assist labor organizations . . ." that the Board may find an unfair labor practice (Sections 7 and 8), which alone it may prevent (Section 10a). It can not be said that the publication of this bulletin interfered with any such freedom on the part of the employees; on the contrary it specifically proclaimed such freedom. There is, therefore, no reasonable basis for the Board's adverse conclusion in this regard and the order below is in this respect clearly right.

(b) THE MEETINGS OF MAY 24, 1937

In making the statement in the bulletin that if there were any dissatisfaction among the men, the officers would be glad to know about it and see what could be done, the officers did not suppose that there was any substantial dissatisfaction existing among the men at that time. No indications of any such condition had been received. They were very much surprised, therefore, to receive during the next few weeks petitions from substantial numbers of men in various points throughout the system indicating dissatisfaction with their wages and working conditions.* These included a request from many of the Norfolk car and bus operators for an increase in wages of nearly 50% and certain changes in hours of work and meals and three oral petitions or requests from the electric and transportation departments in Richmond

* R. 37-38, 40-41, 51-52, 115-118, 249-251, 316-317, 334-336, 372-373, 388, 431, 432-433 and 450-452.

for an increase in wages and certain changes in working conditions.

Some of these requests in regard to working conditions were not hard to satisfy. The wage requests, however, were a different thing. The transportation operators had just been given a blanket raise in February and a further raise of nearly 50% would be wholly impossible (R. 266-267, 431-433). On the other hand, it was recognized that satisfaction on the part of the men is one of the most important assets in any company of this kind, not only for their own contentment but also for the spirit of the organization and for the quality of the service it can give the public. It was essential, therefore, that a state of satisfaction be restored. It seemed hardly possible that this could be done while totally refusing the wage requests; presumably there would have to be some threshing out of an intermediate decision that would give reasonable satisfaction to the men and fair recognition to all the other factors involved. But there were no mechanics available for any such determination and it was difficult to know what to do (R. 432-433).

To determine a course of action, Mr. Holtzclaw called into consultation all the top supervisory officers at a meeting in Richmond on May 20, 1937.* The meeting accepted the premises that dissatisfaction existed and that it must be eliminated. For procedure, it did not seem possible to achieve that result in full unless the men should sit down with the management and discuss their respective points of view and participate in arriving at the terms of the decision (R. 432-435).

Bi-partisan negotiation, in other words, was both apparently impending and necessary. The main problem was that

* R. 37-40, 250-254, 266, 276-278, 317, 339-340, 352-354, 372-373, 388 and 432-435. These references cover the following discussion of the meeting, except as additional references are made.

no machinery for any fair or adequate negotiations was available. Certainly it would not be fair to consult with any such limited groups as those which had happened to make the requests or petitions then in hand without giving a fair opportunity to all other groups to be heard and to participate if they should desire. Nor would any such accidental and isolated discussions afford any adequate means for reaching a decision that could be expected to satisfy anybody: even if the petitioners had been organized groups, which apparently they were not, discussion with any one of them would have unloosed a deluge of other requests from other sources. Thus there were at least 9 divisions in the transportation department as a whole and wages in Norfolk and in Richmond had been on the same basis since 1911, so that any change in one city would instantly affect the other (R. 431-432). If the electric department and the gas department were included, there would be a total of between 25 and 50 separate divisions (Intervener's Exhibits 23 [introduced at R. 686] and 34 [introduced at R. 746] and R. *ioc. cit.*). Obviously no such approach could offer any prospect except a disintegration of morale by competitive wrangling among limited groups. So far as management was concerned it afforded no reasonable possibility of any conclusion whatever, but only of interminable discussions with innumerable parties.

The men, of course, were entitled to take such action as they might desire and only the men could decide what in fact they did desire. It was determined, therefore, to lay the problem before them and invite them to take such action as they might desire, if any, and to abide by the result. Whatever the result might be, at least the wishes of the men at large would be evident and that would be the first step toward reaching any suitable solution of the wage requests that had been made. Whether the men decided against any organization or in favor of one or more national organiza-

tions or one or more independent organizations, in any event the management would then know where to take the next step toward adjusting those wage requests.

As for the mechanics of presenting this problem to the men, clearly there could not be a mass meeting of all the employees. The operations of the company are continuous and some men are always at work. Some number less than all would have to be obtained as a sample audience which could broadcast to the remainder. The department heads were accordingly instructed to assemble their respective groups of men*, tell them that Mr. Holtzclaw would make an explanation of their rights and status under the Wagner Act and invite them to select representatives or emissaries to attend. These men were not expected to have any authority to do anything, but merely to act as reporters. The supervisors were to have absolutely nothing to do with this selection of representatives or emissaries by the men, and the men were to be free to do just as they chose about the selection, as to whom they would select or whether they would select anyone.

These instructions were faithfully carried out. The respective department heads in Richmond and Norfolk told their men of the proposed address and advised them that they might select and send representatives, or not, as they saw fit.**

To eliminate any possibility of misunderstanding (R. 44), this address was prepared in writing (Board's Ex. 4, R. 822 [introduced at R. 37]). It was read simultaneously by

---

* R. 54-55. Such assemblies had been convened several times a year in connection with sales campaigns, safety talks, Community Fund contributions and similar matters unrelated to labor organizations (R. 524 and 536).

** R. 168-170, 373-376, 388-389, 390-391, 469-470, 477-478, 485, 495-496, 503-504, 515-516, 524-525, 553-555, 563-565, 582-584, 674-676, 695-696, 739-740, 781, 807-808.

Mr. Holtzclaw in Richmond* and by R. J. Throckmorton, Vice President of the company's Norfolk operations, in Norfolk.** The entire text of the address follows (Board Exhibit 4, R. 822 [introduced at R. 37]):

> "A substantial number of its employees representing various departments and various occupations have approached the Company with the request that the Company consider with them the matter of their working conditions and wages. In other words, they have requested collective bargaining. The Company's position with respect to this was recently stated in a posted bulletin.
>
> "In a company such as ours, if an individual operator, for example, should ask for himself better working conditions or wages, this Company could not comply with his request without also making the same concessions to other similar operators. In such a case the operator who appealed individually would, as a practical matter, be bargaining collectively for all of his group, which is not the logical procedure.
>
> "This Company is willing to consider the requests mentioned above but feels that, in fairness to all of its employees and to itself, it should at the same time consider other groups who have not yet come to it. If the approaching negotiations are to be intelligent and fair to all properly concerned, they should be conducted in an orderly way, and all interested groups should be represented in these discussions by representatives of their

---

* R. 36-38, 41-45, 53-54, 98-100, 435-436, 447, 462-463, 468-469, 740-741, 790-791; Intervener's Ex. 20-B, R. 915 [introduced at R. 660]. Mr. Holtzclaw presided at this meeting. Mr. Wood, Vice President, and Mr. Moore, Vice President and General Counsel, attended. No other persons in a supervisory position were present.

** R. 254-257, 266-267, 278-285, 286, 311-312, 317-319, 340-341, 347-348, 353-354, 376-377, 468-469, 634-637, 660, 695-696, 714, 807; Intervener's Ex. 20-A, R. 914 [introduced at R. 660]. Mr. Throckmorton presided. Mr. M. C. Smith, Vice President, Mr. Jones, Vice President, and Mr. Miller, Norfolk counsel for the Company, attended. No other persons in a supervisory position were present.

own choosing, as provided in the Wagner National Labor Relations Act, which provides as follows:

> 'SEC. 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.'

"The Wagner Act applies only to employees whose work is in or directly affects interstate commerce and to companies engaged in interstate commerce. Counsel for this Company advise us that in their opinion the provisions of the Act do not apply to local transportation employees, to gas employees in Norfolk, or to certain strictly local employees of the light and power department. In spite of this, the Company wants to make it perfectly clear that its policy is one of willingness to bargain with its employees in any manner satisfactory to the majority of its employees and that no employee will be discriminated against because of any labor affiliations he desires to make.

"The petitions and representations already received indicate a desire on the part of these employees at least to do their own bargaining, and we are taking this means of letting you know our willingness to proceed with such bargaining in an orderly manner. In order to progress, it would seem that the first step necessary to be taken by you is the formation of a bargaining agency and the selection of authorized representatives to conduct this bargaining in such an orderly manner.

"The Wagner Labor Act prohibits a company from 'dominating or interfering with the formation or administration of any labor organization or contribute [*sic*] financial or other support to it.'

"In view of your request to bargain directly with the Company and, in view of your right to self-organization as provided in the law, it will facilitate negotiations if you will proceed to set up your organization, select

> your own officers and adviser, adopt your own by-laws and rules, and select your representatives to meet with the Company officials whenever you desire."

Mr. Holtzclaw made no comment on or explanation of the address, except that at its conclusion he

> "explained to the employees that, in plain everyday English, that statement said that they had a right to do whatever they saw fit to do, and their actions must be determined by their own judgment; that neither the Company nor any of its officials or executives were to interfere with them in the slightest degree in arriving at a conclusion as to whether they wished collective bargaining with the Company, and if so, how they wished to carry out the collective bargaining" (R. 43).

Mr. Throckmorton gave no comment or explanation. In both meetings a few questions were asked, which are fairly summarized by the Board's finding that

> "Employees asking whether they had to join a labor organization and what kind of an organization they should form were told they need join none and were refused advice as to the type of organization they should adopt" (R. 964).

In one particular the Richmond meeting differed from the Norfolk meeting. As above stated, the officers had come to feel, after considering the various petitions that had been received, that some increase in wages would probably be necessary, although of course the amount was not predictable, before any final solution of those various requests could be ultimately found. While this was their guess or belief, no decision whatever had been reached in regard to it, even as to any recognition of that possibility. As Mr. Holtzclaw advanced to the platform to make his speech he concluded that some statement on that subject should be made. After reading his speech he said that if any increase in wages

should be made, either as a result of any collective bargaining that might be conducted in the future, or without any such bargaining as a decision by the company itself*, such increase would be made effective as of June 1st, one week from that day. He knew that the number of employees was large and their locations numerous, there being about 3,400 employees, in about 50 possible units in various communities in tidewater Virginia and northeastern North Carolina, and that it would take some time for the men to reach their decision; his purpose in making the statement was that the men should have an adequate opportunity for deliberate choice as to the decison they desired to make and not feel that there was any reason for hurried action (R. 53, 435). There was no promise of any kind that any increase would ever be made (R. 435-436).

The officials then withdrew from each meeting, permitting the men to remain for discussion if they desired.**

---

*These alternatives, and the independence of the wage increase from collective bargaining, were clearly stated by the witness (R. 53, 435, 443). The Board's brief (pp. 9 and 21) chooses to mention only one of these two alternatives. There was no promise, as the Board's brief chooses to urge; the Board's Decision did not find any promise and the absence of any was proved by overwhelming evidence (R. 267, 284-285, 319, 435-436, 447).

**Though subsequent conduct of the employees is dealt with in Section 5 below, it should be noted that the Board's brief here misstates the action taken by the employees who remained as being to elect a "general chairman to push this thing into an organization" (Board's Brief, p. 22). This was not found by the Board. More credible testimony (R. 763) was that the only action was a decision to

> "report back to our various groups what we have heard and at some subsequent time to get together again and see what the reaction had been upon the people we were representing" (R. 742; and see R. 928).

Similarly in Norfolk it was decided to report back to the men in order to

> "see what they wanted to do about it; whether they wanted to form an organization, or what kind of an organization they wanted to form . . ." (R. 586).

The Board unfairly distorts this address by subtle selection of scattered phrases. No skill of colored rearrangement, however, can obscure the company's unequivocal effort (p. 20 above)

> "to make it perfectly clear that its policy is one of willingness to bargain with its employees in any manner satisfactory to the majority of its employees and that no employee will be discriminated against because of any labor affiliations he desires to make."

Unequivocally, therefore, the company was willing not only to discuss any current problems with any of the men, as had been stated in the bulletin of April 26th, but also to bargain collectively in an orderly manner with any organization, if any, that the employees might desire irrespective of any limitations on the scope of the statute. Clearly what was said neither expresses nor suggests any preference by the management for any particular kind of organization as opposed to any other kind, but that choice was left wholly to the men conformably to the policies declared in the Act. The company's desire was to erase any impression, if any existed, that the men were not free to do as they wished, and any impression, if any existed, that the company was opposed to their joining any labor organization, and to tell them that the company did not want to influence them for or against anything that they might wish to do (R. 311-312). In express terms it was announced that whatever the majority of the employees should decide would be accepted by the company and no employee would be discriminated against because of any choice that he might make. The only limitation was that the results of that choice should be such as to make possible a practical determination of the questions in issue.

There is no basis therefore for any finding that the words of the address in any way obstructed free organizational

choice by the men. Nor is there any basis for such a finding, as the Board attempts, in respect of "the mechanics" of the May 24th meetings (R. 965). It is absurd to claim, as the Board does, that the mere utterance of words by a supervisory officer to "delegates" from the employees who had not been authorized to take any action

> "converted the delegates, isolated from their constituents and under the immediate influence of the officials, into virtual representatives of the employer among the employees who had elected them" (R. 965).

If this, apparently the main ground of the Board's position, were sound, then no employer could say anything of any character relating to organizational questions to any group of employees less than all, or perhaps even to all employees, without making the auditors "virtual representatives of the employer" and thus automatically violating the Act. By the same token no choice of the men on organizational questions, no matter how hearty or widespread, could culminate in a lawful organization, if such men or any of them had once been subjected to the paralyzing mechanics of a statement by the employer, irrespective of what position on organizational matters that statement might have taken.

Certainly the Act was not drawn for the embroidery of such theological niceties. Its subject matter as well as its judicial interpretation plainly show that it was a practical statute intended for the exigencies of practical living and to be interpreted in accordance with average understanding. When viewed in that light there can be no doubt that the address did nothing except present the pending problem to the men and leave such action as might be taken entirely to their own wishes. If it be suggested that the problem in itself invited the taking of some action by the men, there can be no reasonable claim that the address indicates any

preference as to the character of any organization that might be formed. On the contrary, it gave a clear assurance that whatever a majority of the employees should decide would be accepted by the company and no employee would be discriminated against because of any choice that he might make.

So, the court below was clearly right in summarizing the May 24th meetings as follows:

> ". . . in the address of the president, the right of the employees to select representatives of their own choosing was made abundantly clear, and . . . the duty of the company and its officers to refrain from interference was properly emphasized; and we see nothing either in the address or in the surrounding circumstances from which the employees could have gained any contrary impression. No hostility towards any outside union was manifested; and, while the Board stresses the concluding paragraph of the address, there is certainly nothing in it, or in any other part of the address, to indicate a desire that the organization to be set up by the employees be not affiliated with an outside organization. On the contrary, the rights of employees were stressed by direct quotation from the labor act and the employees were expressly assured that the company was willing to bargain with them in any manner satisfactory to the majority, that no employee would be discriminated against because of labor affiliations and that the company was prohibited by law from dominating or interfering with the formation or administration of any labor organization or contributing financial or other support to it." (R. 1014).

4. The Board's Findings as to the April 26th Bulletin and the May 24th Meetings are Contrary to the Intention of the Act and the Requirements of the Constitution.

(a) THE ACT

The Board makes no finding of any threat of restraint, oppression or coercion in the event of non-action by the employees or of action by them contrary to what the Board asserts to have been the wishes of the company. No such finding could be made because each of the documents in question makes it unequivocally plain that no such result would follow. The bulletin specifically stated that "The company recognizes the right of every employee to join any union that he may wish to join, and such membership will not affect his position with the company." The address specifically stated that "no employee will be discriminated against because of any labor affiliations he desires to make." When this bulletin was posted throughout the properties and confirmed within a month by a public address of senior executives, there could be no possible uncertainty on the part of any employee as to his entire liberty of choice.

It has been submitted above that on any fair analysis of the bulletin and the address, neither contains any indication of partisan feeling by the management. Even if it were true, however, which it is not, that either one or both of these documents suggested a personal preference on the part of management, it would still be true that such a suggestion in such a context could not constitute an unfair labor practice within the meaning of the Act. The Act is designed to prohibit conduct on the part of an employer which overrides the will of the employee. Of course in determining whether specified conduct is sufficient to override the will of the employee, matters of degree are to be consulted. In any schedule of degree, however, a line must ultimately be

drawn. That line would lie short of the unreasonable assertion that an unfair labor practice is committed by such a suggestion in contexts which leave it undebatably clear that the employee has a right to do as he wishes and will be respected and protected in the exercise of that right.

This point of interpretation was clearly determined by this Court in respect of the Railway Labor Act (*Texas & New Orleans R. Co.* v. *Railway Clerks*, 1930, 281 U. S. 548, 568):

> " 'Interference' with freedom of action and 'coercion' refer to well understood concepts of the law. The meaning of the word 'influence' in this clause may be gathered from the context. *Noscitur a sociis. Virginia* v. *Tennessee*, 148 U. S. 503, 519. The use of the word is not to be taken as interdicting the normal relations and innocent communications which are a part of all friendly intercourse, albeit between employer and employee. 'Influence' in this context plainly means pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls 'self-organization.' The phrase covers the a[illegible] of relation or opportunity so as to corrupt or ove[illegible] the will, and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives for the purposes of this Act than in relation to well-known application of the law with respect to fraud, duress and undue influence."

In looking back to settled prior meaning for the interpretation of new statutes this Court was following customary practice. Thus more recently the Court, in *Case* v. *Los Angeles Lumber Products Co.*, 1939, 308 U. S. 106, held that the words "fair and equitable" had acquired a settled meaning in prior equity jurisprudence and that when the Congress embodied them in Section 77B of the Bankruptcy Act it thereby adopted the pre-existing standard.

That principle of interpretation and the decision of this Court in the case of the Railway Clerks are particularly apposite here for that decision was a leading case at the time the Act was under consideration and the Railway Labor Act was direct source material for the Act. Not only are the Railway Clerks Case and the Railway Labor Act profusely cited in the committee reports underlying the Act,* but the Senate Report (p. 9) declares that Section 2 of the Railway Labor Act has "identical objectives" with Section 8(2) of the Act, and both of the two House reports characterize Section 2 of the Railway Labor Act as "the counterpart" of Section 8(2) of the Act (May 2d report, p. 9 and May 21st report, p. 15). The House report of June 10 (p. 3) adds that

> "... the bill is merely an amplification and further clarification of the principles enacted into law by the Railway Labor Act and by Section 7a of the National Industrial Recovery Act, with the addition of enforcement machinery of familiar pattern".

All these reports, moreover, assimilate a violation of Section 8(2) with "overriding the will of employees" (Senate Report p. 10; House Report May 21st p. 17; House Report June 10th p. 19).

Because of the views quoted on page 25 above (that the company's declarations were neutral), the court below did not feel that it was necessary to confront the point dealt with in this section. But on the point dealt with in this section, the court below felt that the decision in the Railway Clerks' Case was applicable and decisive (R. 1013). It did not purport to invoke any wider or less established criterion.

---

* 74th Congress, First Session, Senate Report 573, May 2, 1935, pp. 9, 13, 14, 17; House Report No. 972, May 21, 1935, pp. 7, 13, 15, 16; House Report No. 1147, June 10, 1935, pp. 3, 9, 15, 16, 17, 18 and 19.

The application under the Act of this standard from the Railway Clerks' Case is not unique to the case at bar but represents the general view both of the court below and of other Circuit Courts of Appeal.

Thus in *L. Greif & Bro. Inc.* v. *N. L. R. B.*, 1939, 108 F. (2d) 551, the court below was faced with a factual situation where management had pretty plainly indicated a preference for an unaffiliated union but made it clear that the employees had complete freedom of individual choice (108 F. (2d) at 553-4 and 555). The court held that such statements could not be found to be an unfair labor practice, saying (at 557-558):

> "The real query is whether the management has interfered or taken part in the formation of the new body. It is not an answer to point to circumstances indicating that the management preferred an inside to an outside union, . . . It goes without saying that the determination of the employees to form their own association and to be free from the outside interference of a national union was influenced by their past experience in the plant. . .; but these contacts did not deprive them of their rights under the Act or require them to choose bargaining representatives offensive to their employer . . ., so long as their choice was not dominated or interfered with by the employer" [here quoting from the *Ballston-Stillwater Knitting Co. Case* as below on the meaning of domination and interference.]*

*This is in no way inconsistent with the condemnation by the same court of the "Sasser statement" (*System Federation No. 40* v. *Virginian Railway Co.*, 1935, E. D. Va., 11 F. Supp. 621, 624-5) in *Virginian Railway Co.* v. *System Federation No. 40*, 1936, 84 F. (2d) 641, 644, affirmed on other grounds, 1937, 300 U. S. 515 (cited Board Brief p. 31). That was a violent attack on unions and union membership. Nor is the cited decision inconsistent with *American Enka Corp.* v. *N. L. R. B.*, 1941, CCA 4, 119 F. (2d) 60 (cited in Board Brief, p. 32) for the statement there embodied a clear threat of discharge. It is of interest that the statements in both those cases

The same court has again more lately said:

> "Some latitude in the discussion of labor matters must be conceded to an employer. He may express an opinion if it carries no threat of discrimination and does not interfere with the attempts of his employees to organize." (*N. L. R. B.* v. *Clarksburg Publishing Co.*, 1941, 120 F. (2d) 976, 979)

The Circuit Court of Appeals for the Second Circuit laid down a similar criterion in *Ballston-Stillwater Knitting Co.* v. *N. L. R. B.*, 1938, 98 F. (2d) 758, 762:

> "To constitute domination or interference by the employer we think that it must appear that the employees are acting for him rather than for themselves, or that the employer in some manner gives aid to one group which he withholds from the other, or discriminates in favor of members of a labor organization or against non-members."

A vigorous presentation of the negative right not to join any union was held by the Circuit Court of Appeals for the Third Circuit not to constitute in itself a violation of the Act (*N. L. R. B.* v. *Blossom Products Corporation*, 1941, 121 F. (2d) 260, 261).

A specific decision on the point at issue was made by the Circuit Court of Appeals for the Sixth Circuit in *Midland Steel Products Co.* v. *N. L. R. B.*, 1940, 113 F. (2d) 800, quoted at p. 35 below. This view was approved and carried further by that court in *N. L. R. B.* v. *Ford Motor Co.*, 1940, 114 F. (2d) 905, cert. den., 1941, 312 U. S. 689.

With equal particularity the Circuit Court of Appeals for

---

were condemned in opinions by the same Judge who wrote the opinion below. A discharge threat was also embodied in the statement involved in *N. L. R. B.* v. *Elkland Leather Co.*, 1940, CCA 3, 114 F. (2d) 221 (cited Board's Brief p. 31).

the Seventh Circuit said in *Jefferson Electric Co.* v. *N. L. R. B.*, 1939, 102 F. (2d) 949, 956:

> "In the instant case there were no threats so as to intimidate the employees into joining a particular labor organization against their will, and there is no evidence in the record which would warrant a finding that the conduct of the company was indicative of coercion or intimidation. To us it is clear that the company had come to a realization that its plant was about to be unionized. It had for many years maintained friendly relations with its employees and desired that such relations continue. It was in this spirit that it allowed the use of the cafeteria and other plant privileges. Such acts, standing alone, are not inconsistent with a strict 'hands-off' policy. It was never the intention of Congress to prohibit friendly intercourse between employers and labor organizations, to curtail freedom of speech, to deprive an employer of his right to express an honest opinion or to outlaw the extension of common courtesies. It is more in keeping with the purpose of the Act to foster such friendship rather than to condemn it."

Summarizing, the court added (pp. 956-7):

> "But while it is true that employer leadership through supervisory employees is condemned by the Act, and that pressure overriding the will of the employees, as a means of encouraging or discouraging membership in any labor organization, constitutes interference with a worker's right to select his representative, it does not follow that the mere showing of a preference and acts of cooperation constitute interference with an employee in his exercise of the rights guaranteed under the Act."

More lately that same court has said:

> ". . . a mere showing of preference does not constitute unlawful interference with an employee in the exercise of his rights under the Act. It is only when such asserted preference, with all surrounding facts and circumstances, amounts to improper influence and approaches a coercive character that it is to be condemned." (*Diamond T Motor Car Co.* v. *N. L. R. B.*, 1941, 119 F. (2d) 978, 982)

A similar decision by the same court is found in *N. L. R. B.* v. *Gutmann & Co.*, 1941, 121 F. (2d) 756.

To the same effect the Circuit Court of Appeals for the Ninth Circuit said in *N. L. R. B.* v. *Union Pacific Stages, Inc.*, 1938, 99 F. (2d) 153, 178-9:

> "It is difficult to think that Congress intended to forbid an employer from expressing a general opinion that an employee would find it more to his advantage not to belong to a union. Had Congress attempted so to do it would be in violation of the First Amendment, U. S. C. A. Const. Amend. 1. The right of workers to organize freely must be conceded. It is a natural right of equal rank with the great right of free speech, protected by the Constitution. But the right of the workers to organize is not destroyed by expressions of opinion of the employer or employee, such as referred to above. The case is different where the employer makes use of threats to prevent organization."

The Court of Appeals for the District of Columbia has taken a similar position:

> "The labor law does not prohibit the right of opinion on the part of the employer, nor the expression of it . . .
> "Before oral statements of an employer may be held to be an unfair labor practice, it must appear that they

> interfered with, restrained or coerced employees in the rights guaranteed by the Act, that is to say, the right to join labor organizations, to bargain collectively and to engage in concerted activities. But nothing that Lewis is quoted as having said, nor the surrounding circumstances, conveys the idea that the employees had anything to fear because of their union activities" (*Press Co.* v. *N. L. R. B.*, 1941, 118 F. (2d) 937, 942, cert. den., 1941, 61 S. Ct. 1118).

The standard of the Railway Clerks' Case has therefore been adopted and followed in at least five of the Judicial Circuits and in the District of Columbia.

This standard is not in conflict with the Court's statement in *N. L. R. B.* v. *Link-Belt Co.*, 1941, 311 U. S. 584, 600:

> "Intimations of an employer's preference, though subtle, may be as potent as outright threats of discharge."

The issue here is not subtlety against perspicuity. The whole question is the nature of the substantive message, whether declared in household words or implied by any form of indirection. In the *Link-Belt Case* there were declarations of actual hostility to unions, admitted discharges for union activity and no statement whatever of neutrality. So indications of employer preference implied possible loss of employment for going against that preference. Here, however, the men have been repeatedly and unequivocally assured of their complete independence of choice and of their complete freedom from discrimination because of any choice they might make. The restraining effect of the preference disclosure which the Court properly found in the facts of the *Link-Belt Case* can not therefore exist among the facts here presented.

Neither the April 26th bulletin nor the May 24th address carries any suggestion of a threat or of other interference

with complete liberty of individual choice on the part of the men, but on the contrary both expressly leave the choice entirely to them. It must, therefore, follow *a fortiori* from the Railway Clerks' Case and the other decisions cited above that as a matter of the proper interpretation of the Act neither communication affords any basis for a finding of unfair labor practice; on the contrary, the Board's conclusion that these communications were unfair labor practices either has no basis or depends upon an inadmissible interpretation of the Act; and the Board's order, so far as dependent on those two communications, was therefore properly set aside.

(b) The Constitution

The foregoing interpretation of the Act has been rested on (1) the adoption by Congress of terms having well-known meanings in prior jurisprudence, (2) the practical purposes of the Act and (3) the interpretation of the similar terms of related statutes by this Court and the interpretation of these particular terms of this statute by various Circuit Courts of Appeal. More, however, is involved than a mere question of statutory construction. Important constitutional rights are in issue. If the Act were interpreted or applied to condemn a statement of preference without any threat of coercion but in a context leaving complete liberty of individual choice, the result would be so unreasonable, so extreme, so excessive in relation to the public purposes of the Act and so drastic a restriction on the right of employer self-expression as to be unlawful under the First Amendment to the Federal Constitution.

The Court has recently given solemn emphasis to the importance of the constitutional right to freedom of speech and has held that a State may not abridge the individual liberty of those who wish to speak their mind on religious

matters (*Schneider* v. *State*, 1939, 308 U. S. 147, 160) or on labor disputes (*Schneider* v. *State, supra*; *Thornhill* v. *Alabama*, 1940, 310 U. S. 88; *Carlson* v. *California*, 1940, 310 U. S. 106). The same test applies to Federal action (*Schneider* v. *State, supra*, at p. 160).

Applying these principles directly to the Act, the Circuit Court of Appeals for the Ninth Circuit has said that it could not be interpreted as forbidding a statement of employer preference unaccompanied by threat of coercion, because if Congress had attempted to enact a law of such meaning, "it would be in violation of the First Amendment" (*N. L. R. B.* v. *Union Pacific Stages, Inc., supra*). To the same effect the Circuit Court of Appeals for the Sixth Circuit held as follows (*Midland Steel Products Co.* v. *N. L. R. B.*, 1940, 113 F. (2d) 800, 804):

> "The finding of the Board that the comment of the general superintendent that the men in petitioner's Detroit plant were 'disgusted with unionism' constituted evidence of interference, restraint and coercion, raises the question whether any and all statements derogatory to unions are prohibited by the Act. It is not claimed that the comment was coupled with any threat of discrimination or loss of employment. It did not interfere with or restrain attempts to organize, nor did it attempt to do so. The comment may have been either a statement of fact or an expression of opinion, or a statement embodying both elements. But neither statement of fact nor expression of opinion by the employer is prohibited by the statute, and if they were, the statute would contravene the free speech provision of the First Amendment. Bearing in mind that 'the dissemination of information concerning facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution' (*Thornhill* v. *State of Alabama*, 60 S. Ct. 736, 744, 84 L. Ed. 1093, decided by the United States Supreme Court April 22,

> 1940), we think the same principle applies *a fortiori* with reference to this simple conversation wholly lacking in any element of threatened discrimination because of union membership or activity. Unless the right of free speech is enjoyed by employers as well as by employees, the guaranty of the First Amendment is futile, for it is fundamental that the basic rights guaranteed by the Constitution belong equally to every person. The use of influence amounting to interference, restraint or coercion plainly is illegal. *Cf. Texas & New Orleans Rd. Co.* v. *Brotherhood of Railway & Steamship Clerks, supra.* But where no such element exists, the employer is not precluded from conversing with employees about labor questions."*

This view was approved and carried further by the same court in *N. L. R. B.* v. *Ford Motor Co.*, 1940, 114 F. (2d) 905, cert. den., 1941, 312 U. S. 689.

An interpretation which would make a statute unconstitutional is to be avoided** and of course an unconstitutional application of an act is not admissible. Constitutional considerations thus confirm the conclusion already reached on other grounds, that the Act can not forbid an indication of employer preference unaccompanied by threat

---

* To the same effect it is said in 1 Bill of Rights Review, 1940, p. 46:

> "There may, of course, be unconstitutional applications of a constitutional statute. And an attempt on the part of the Labor Board indiscriminately to prohibit any and all expressions of employer opinion, or to label 'coercive' even an honest statement of the employer's point of view backed by no express or implied threat of other tactics would seem clearly unconstitutional."

But see *N. L. R. B.*, v. *Reed & Prince Mfg. Co.*, 1941, CCA 1, 118 F. (2d) 874, 889, cert. den., 61 Sup. Ct. 1119; *N. L. R. B.* v. *Federbush Co., Inc.*, 1941, CCA 2, 121 F. (2d) 954, 956; *N. L. R. B.* v. *New Era Die Co.*, 1941, CCA 3, 118 F. (2d) 500, 505.

** *U. S.* v. *Delaware and Hudson Co.*, 1909, 213 U. S. 366; *U. S.* v. *Standard Brewery*, 1920, 251 U. S. 210; *Texas* v. *East Texas R. R. Co.*, 1922, 258 U. S. 204; *Bratton* v. *Chandler*, 1922, 260 U. S. 110; *Panama Railroad Co.* v. *Johnson*, 1924, 264 U. S. 375.

of coercion and an order based on any such construction was properly set aside.

5. Organization of the Independent

(a) Position of Management

The officers of the company did not know and were never informed of what occurred after they left at the Richmond meeting of May 24th or at the Norfolk meeting on the same day (R. 45-46). They made no effort to ascertain what, if anything, the men were doing in regard to any matter of labor organization and had no knowledge as to any such matters except a request on June 14th by one of the Norfolk car operators for separate bargaining with a part of the Norfolk transportation employees* and a request by an employee committee on June 15th for a list of employees.**

Indeed the management's attitude was just the opposite of interrogation or partisanship. At the consultation of department heads in Richmond on May 20th, which has already been described, instructions were issued, and directed to be transmitted to all subordinate officials to and including foremen, that no person in any supervisory position should interfere or assist, or attempt to advise or influence em-

---

* R. E. Elliott, Jr., a bus operator, who is commented on further below. This request was declined by Mr. Holtzclaw, saying that the company's attitude had already been stated in the May 24th address and he could not "in fairness to the Company or to the employees" deal with any such small group constituting a part of the transportation employees in Norfolk. R. 60, 256-259, 436-438, 445-446 and 447-448.

** The committee was designated as "Steering Committee for the Richmond Division for the proposed 'Independent Organization of Employees of The Virginia Electric & Power Co.'" R. 289-290, 457, 752, 757-758; Board's Exhibit 39, R. 855 [introduced at R. 458]; Board's Exhibit 40-A, R. 857 [introduced at R. 459]. This list was supplied and the Company was paid for the cost of its preparation. Mr. Holtzclaw testified that a similar list would have been given to any one requesting it in connection with any effort to organize the men, either to the AFL or the CIO or any one else, but in fact no such request was received from any one else. R. 457.

ployees, in any way whatever regarding any choice or activity of organization. Normally one instruction suffices. As a result, however, of the questions which were asked in the May 24th meetings, the officers thought it likely that foremen or superintendents might be pressed for advice or comment on the question of labor organizations. To be absolutely sure that there should be no communication even in this way between the men in supervisory positions and those not in supervisory positions, further meetings of the supervisory personnel were held in Richmond and in Norfolk on May 25th to repeat and emphasize the original instructions. All department heads and sub-department heads were instructed that every person in any supervisory position must strictly refrain from any action or communication that might conceivably influence any thought or action on such matters by the men, that these instructions must be carried out to the letter and that they must be transmitted down to and including all the foremen.* As a part of these instructions, the supervisors were definitely told that company property should not be used by any labor organization of any kind and that no labor organization should be permitted to solicit membership on company property or in working hours (R. 289). These instructions were promptly handed down to the subordinate supervisors.** No instance of any violation of these instructions ever came to the officers' attention, nor did they ever receive any complaint of any such violation until made by the Board.

These instructions were substantially reiterated by a public notice to all employees on June 24th. A newspaper article that morning*** carried a statement by a CIO or-

---

* R. 257-258, 267, 285-289, 319-320, 341-343, 354-355, 413, 455-456.

** R. 389, 397, 418, 425-426, 477-478, 481, 482, 484, 485, 495-499, 500, 502-503, 506-507, 509-514, 516-517, 525-526, 550, 555-556, 564-565, 569-570.

*** Richmond *Times Dispatch* of June 24th, Respondent's Ex. 11, R. 871 [introduced at R. 247].

ganizer that the company had offered Elliott a fine job in North Carolina to leave Norfolk and "turn over his organization to the Company." Of course no such offer or suggestion had ever been made to Elliott.* To clear up that untruthful accusation a bulletin was immediately posted over Mr. Holtzclaw's signature throughout the properties (R. 438 and Respondent's Exhibit 7, R. 860 [introduced at R. 137, 248]). After denying the accusation** the bulletin said:

> "Employees of Virginia Electric and Power Company have a right to self-organization, to form, join or assist labor organizations and to bargain collectively through representatives of their own choosing, and the Company has not sought and does not seek to dominate or interfere with employees in the exercise of any of their rights, individually or collectively."

Thus the absolute organizational liberty of the men was announced three times, at intervals of almost exactly one month, in April, May and June.

Beyond these facts the management had no further knowledge. At the hearing, however, the Independent intervened and introduced over 1800 pages of evidence and about 60 exhibits. The history of its creation is consequently available in microscopic detail. Some outline of that history, which is dealt with so cursorily in the opinion of the Board and in its brief, must be examined to see the actual tone and tenor of what was taking place. Its importance justifies review at some length, particularly in view of its non-controversial nature, since *no fact asserted in all of the following sub-section (b)-(i) is controverted by any contrary finding of the Board.*

---

* R. 320-324, 343-345, 358, 383, 390-392, 436-438.

** It was shown at the hearing that *Elliott* had never made any such statement (Respondent's Exhibit 7, R. 860 introduced at R. 137, 248]; and R. 137-138, 391-392 and 413).

(b) Employee Meetings, May 25th-June 1st

(1) NORFOLK

(i) *Distribution Department*

Among those who attended the Norfolk meeting addressed by Mr. Throckmorton on May 24th, were Faust, a lineman (R. 574, 582-586), Brown, a cable splicer (R. 674, 675-676), Morris, a line trouble shooter (R. 695-696), Tatem, a power station switchboard operator (R. 703-704, 714-715), and N. R. Jones, also a power station switchboard operator (R. 721-722), all being non-supervisory employees. After the officials left that meeting, all the men started talking at once and there was no organized discussion but only confusion (R. 586-587, 636-638, 676, 704, 714). In that state of affairs, one of the employees, Nicholson, an employee in the credit department, attempted to bring the meeting to order and Tatem moved that they adjourn and report back to their several groups, see what the others wished to do and meet again on June 1st (R. 586-587, 637-638, 704).

After the adjournment, Brown and Faust discussed briefly getting the men in their department together to see if they wanted an organization and if so, what kind of an organization (R. 587). The next day, May 25th, Faust talked to a number of the men in the line department (R. 587). At Brown's suggestion a meeting was arranged for the purpose of making a report as to the May 24th meeting, to all the men in the distribution department. Brown told Mr. Crafton, Superintendent of Distribution in Norfolk, that the men desired to hold a meeting about their usual quitting time at 4:30 in the afternoon and requested that none of the men be required to work overtime, so that they might attend such meeting. Crafton issued the requested instructions, but did not order the men to attend such meeting nor did he know where the meeting was to be held. In fact the meeting was

held at the Company's Cove Street garage, but no permission was given for its use. No supervisors were present at the meeting. Almost all the men in the Distribution Department were there. Brown was elected chairman. Faust was first elected secretary but when he declined, N. F. White, an employee in the distribution department, was elected secretary of the meeting. There was no voting for the election of representatives or for the establishment of an organization, but a vote was taken on the question of what kind of an organization the men desired. Brown asked the men whether they wanted a "collective bargaining plan," which meant without affiliation with any outside organization, or CIO or AF of L. 153 were cast, with the following result: CIO—20; no outside affiliation—6; "collective bargaining"—126; and "nothing"—1. After the count the ballots were burned. Written minutes were kept of the meeting.* Before the close of the meeting Brown was given a written designation by a majority of the employees present as their representative in the matter of "collective bargaining."** There were 171 signatures to this designation (Intervener's Ex. 3-A-G, R. 888 [introduced at R. 591]) compared with a total of 233 employees in the entire Distribution Department of the Norfolk Division (Board's Ex. 40-B, R. 857 [introduced at R. 459]).

(ii) *Generating Department*

One of the men attending the May 24th meeting from the Norfolk Generating Department was, as already stated, N. R. Jones, a switchboard operator. As a result of suggestions

---

* Intervener's Ex. 3-F, R. 888 [introduced at R. 591]; R. 587-594, 638-642, 643, 668, 671-672, 676-679, 687-688, 694-695, 696-697, 814-815.

** Intervener's Ex's 3-A-G, incl., R. 888 [introduced at R. 591], R. 587, 589-590, 638-644, 676-678, 687-688.

from his fellow employees, who seemed to want him to take the lead, he called a meeting of the power plant employees on May 27th to inform them of the May 24th meeting and obtain an expression of their views. This meeting was held in the auditorium at the Reeves Avenue Station. That is a recreational room for the employees, which they had equipped with a pool table, kitchen equipment and similar facilities; they did not consider permission necessary for its use (R. 719-720). Jones did in fact ask Mr. Davis, the plant superintendent, if there would be any objection to using the auditorium for a meeting, but did not mention its purpose. There were 40-50 men present, a majority of the production operating men. The men voted between AF of L, CIO and an independent organization. They voted unanimously for the last and elected a committee consisting of N. R. Jones and Tatem in order to set up an organization of that kind (R. 704-705, 722-723, 727-728, 733, 736-737).

(iii) *Transportation Department*

Meetings of the car and bus operators were called by Elliott to meet on May 28th in the Company Y.M.C.A.* They decided not to affiliate with the AF of L or the CIO but to have an independent organization.** The next day they elected a committee of representatives and the Portsmouth car and bus operators unanimously voted in favor of the same organization.***

---

*Quarters maintained in part by dues paid by the men; include recreational facilities, shower baths and barber services; regarded by the men as in large measure their own premises (R. 327-328 and 789).

** Statement by Elliott in Norfolk *"Virginian Pilot"* of May 28, 1937 (Respondent's Exhibit 11, R. 862 [introduced at R. 247]).

*** Statement of Elliott in Norfolk *"Virginian Pilot"* of May 29, 1937 (Respondent's Exhibit 11, R. 863 [introduced at R. 247]).

(iv) *June 1st Meeting of all Departments*

By June 1st, a week after the May 24th meetings, most or all of the various departments in Norfolk had heard a report of the May 24th address and designated, with varying degrees of formality, representatives to attend a joint meeting on June 1st to consider further action. This meeting was held in the auditorium of the general office building but, so far as the record shows, without any permission. Some 70-80 men were present, representing all departments. Most of them had authority to try to form an independent organization (R. 687-688) and some of these authorizations were in written form like Brown's (R. 687). The meeting, however, was open to all employees. Elliott proposed an Employees Association of Committees, or EAC, to be headed by a salaried Director with sweeping authority, removable only "by due process of law," and explained it with a blackboard lecture. This was the principal subject of discussion and no form of organization was agreed upon.*

(2) RICHMOND

(i) *Distribution Department*

After the departure of the officials from the May 24th meeting in Richmond there was disorganized discussion among the employees who remained (R. 741-742, 782, 790-791, 792-793). The men nominated an employee Paige as chairman to conduct the meeting, but he declined and they elected Holzbach, a clerk in the meter department (R. 741-742, 791). He did not seek the chairmanship (R. 791) but felt that as a representative of his group he should report on the May 24th meeting to his fellow employees (R. 791). The next day he induced Mr. Walke, a superintendent, after

---

* Intervener's Ex. 4, R. 889 [introduced at R. 592]; Faust, R. 592-594, 633-634, 643-645; Tatem, R. 704-705; Morris, R. 697; Brown, R. 678-679, 688; Hough, R. 801; Reutt, R. 71-73, 86-89; Elliott, R. 107-110, 123-124; Rountree, R. 806-807; Parke, R. 807.

some difficulty, to permit him the use of the auditorium in the service building for two meetings of employees for the purpose of making such a report (R. 742-743, 791-792, 795-798). In each resolutions were adopted as follows: (1) to have a union of some kind; (2) not to join the AF of L or the CIO; (3) to have an independent organization. The vote for an independent organization was almost unanimous in each meeting. No one at either of the two meetings indicated by any statement a belief that the Company had any preference whatever. They agreed to hold another meeting on June 1st and elected Staughton, a construction employee, and Bertolett, a distribution engineer, as representatives to attend (R. 739, 742-744, 787, 795-797).

(ii) *Generating Department*

Roberson, an electrician, attended the May 24th meeting with several others from his department (R. 780-782). The next day he reported to a meeting of employees in the Power Station and was asked to represent them. He caused some ballots to be prepared by his brother, who was employed elsewhere, bearing the question: "Do you wish the CIO organization, the AF of L organization, an independent organization or no organization?" These ballots were delivered and collected at the houses of most of the men by automobile. The remainder of the men filled out the ballots at the plant. The result of the balloting was: CIO—22; AF of L—1; independent organization—93; no organization—7 (R. 782-783, 784, 787).

(iii) *Transportation Department*

Edwards* was elected by the Richmond transportation employees on May 24th as their representative to attend the meeting that night (R. 808-809). He reported to his fellow

* Not the Supervisor Edwards (at Norfolk) discussed below.

employees on May 25th at a meeting at the car barns and at that time it was voted to form an independent organization. These employees at once proceeded to engage their own quarters for office and meeting rooms and contributed the money to pay all the expenses (R. 809).

(iv) *June 1st Meeting of all Departments*

Holzbach sent out notices for the June 1st meeting (Intervener's Ex. 32, R. 928 [introduced at R. 754]), addressing them to the various representatives who had been chosen (R. 744, 791-792) in informal elections among the men. This group was styled for the first time then, or shortly thereafter, a Steering Committee. The meeting was held in the service building, the use of which for organization purposes Holzbach knew would not be permitted by the company (R. 798). Underwood, an assistant engineer, was elected chairman and Bertolett was elected secretary. The principal decision was to appoint Underwood, Bertolett and an employee named Clarke as a committee to see what was being done in Norfolk and to select a lawyer to draw up "a constitution and plan of organization for the desired association of Va. Elec. & Power Co. workers" (Intervener's Ex. 33, R. 928, 930 [introduced at R. 745]; and R. 744-745, 763-765). The sentiment was overwhelmingly in favor of an independent organization (R. 773-776, 783). This sentiment and the events of the week in Richmond are summarized as follows in the minutes (Intervener's Ex. 33, R. 928-929 [introduced at R. 745]):

> "In the course of the ensuing week, the various delegates reported to their respective Departments on the discussion in the meeting of May 24, and endeavored to obtain an expression of the attitudes of these Departments toward the issues involved. In each instance, the workers felt that for the protection of their interests they should organize in conformity with the pro-

visions of the 'Wagner Act' and other pertinent legislation. Also, the workers emphatically desired that such an organization should be instituted among themselves, that it consist only of Va. Elec. & Power Co. employees who would act only for themselves, and that there be no outside aid or interference whatsoever."

(c) JOINT MEETING AT PETERSBURG ON JUNE 3RD

There was no cooperation between Richmond and Norfolk before the June 1st meetings (R. 688, 715, 728). The next day Underwood, pursuant to the action at that meeting, got in touch with friends of his in Norfolk and arranged a joint meeting for the night of June 3rd in Petersburg, an intermediate point.*

There were 12 representatives at the meeting, 3 from Richmond and 9 from Norfolk (Board's Ex. 19, R. 839 [introduced at R. 111, 248]; and R. 755-756).**

Elliott submitted his plan for EAC and asked that it be adopted forthwith but the other representatives disapproved. The only affirmative business was to agree on the employment of a lawyer to draw up organization papers, their form being left to his judgment.*** After discussion of a lawyer from Richmond or a lawyer from Norfolk or a lawyer in each place, it was agreed to engage one in Petersburg as a

---

* R. 723, 745-746, 765 and Intervener's Ex. 34, R. 931 [introduced at R. 746].

** These had a broad coverage of representation: Thus, Underwood for the Richmond General Office employees (R. 761-762) and Bertolett for the Richmond Installation Department (R. 744); Tatem for the Norfolk Operating and Maintenance employees (R. 706); Brown for the Norfolk Distribution employees (R. 587-588, 679-680); Morris for the Portsmouth linemen (R. 697-698); Elliott and Hough for the Norfolk Transportation men (Board Ex. 19, R. 839 [introduced at R. 111, 248]); and Gregory and Walsh for the Norfolk Gas Department (R. 705-706).

*** R. 110-112, 124-125, 679-680, 688, 697-698, 707, 715, 755-756, 766, 776.

neutral point and a committee was appointed to obtain Mr. Bohannan, if he was available, and otherwise William Earle White. Neither of those persons has, or has ever had, any connection whatever with the Company.

Promptly after this meeting the committee called on counsel in Petersburg and asked them to assume the task of formulating a constitution and by-laws for the organization of an independent labor union. Mr. White agreed to serve and soon prepared a draft for those papers (R. 715, 766-767, 776).

(d) Further Consideration of Plans

During the ten days after the Petersburg meeting numerous meetings were held both in Richmond and in Norfolk for the purpose of hearing reports of the Petersburg meeting and the employment of counsel, and of considering the form of the draft constitution and by-laws when available. At least six of such meetings are shown by the record.* During the course of these meetings the draft constitution and by-laws were revised considerably (R. 715-716, 746-748) and a committee was appointed in Norfolk to meet with the Richmond representatives for changing and approving a form of constitution, it being considered that a committee could function more efficiently than any large group.

---

* June 4th, Norfolk—Cove Street (R. 680-681); June 7th, Norfolk—General Office Building (Board Ex. 20, R. 841 [introduced at R. 112, 248]; R. 680-681, 698, 802, 806-807); June 9th, Richmond—(Intervener's Ex. 35, R. 932 [introduced at R. 746]; R. 746); June 9th, Norfolk—Y.M.C.A. (R. 112, 405-406, 802-803); June 11th, Norfolk—General Office Building (Intervener's Ex. 6, R. 889 [introduced at R. 595]; R. 680-681, 698, 707-709); and June 14th, Norfolk—Reeves Avenue (Intervener's Ex. 31, R. 927 [introduced at R. 723]; R. 723, 725).

(e) Creation of the Independent

On June 15th a joint meeting of the Norfolk and Richmond committees was held in the American Legion Hall in Richmond, attended also by representatives from Fredericksburg, Petersburg, Williamsburg, Roanoke Rapids and perhaps Suffolk, as well as by Mr. White. His draft papers were read paragraph by paragraph and revised. As a result of protracted discussion, lasting over four hours, the committees approved the constitution and by-laws in their revised form and at the same time approved a form of membership card as a means of soliciting adherence to the proposed organization.* The next day Mr. White had the first two papers mimeographed and the last printed (R. 747-750 and Intervener's Exhibits 36 and 37, R. 934 [introduced at R. 748, 749]). These papers designated the name of the new association as "The Independent Organization of Employees" or the Independent.

The resulting constitution and by-laws were reported by the respective representatives to numerous groups of the men, for consideration, revision and ratification or rejection. Seven of these meetings are indicated by the record.** All of these meetings were called and conducted by the em-

---

* Minutes, Intervener's Exhibit 22, R. 915-920 [Introduced at R. 681]; Board Exhibit 26, R. 843 [introduced at R. 173]; Board Exhibit 36, R. 844-855 [introduced at R. 247]; R. 247, 681-683, 688-689, 694, 708, 746-747, 768, 783.

** June 15-20, Petersburg (R. 787-788); June 16th, Norfolk (Intervener's Ex. 7, R. 891 [introduced at R. 596, 598]; R. 595-598, 631-632, 681, 683, 698-699, 708-709, 806-807); June 18th, Richmond (R. 808-809); June 22nd, Norfolk (Intervener's Ex. 8, R. 891-892 [introduced at R. 598]; R. 598-600, 646-648, 682-683, 689, 693, 709, 710, 713, 804-805, 806-807); June 23rd, Richmond (Intervener's Ex. 38, R. 934-938 [introduced at R. 750]); June 28th, Norfolk (Intervener's Ex. 9, R. 892-893); and June 29th, Richmond (Intervener's Ex. 39, R. 938-942 [introduced at R. 750]; R. 750, 769, 808-809).

ployees themselves and not on company property. A majority in each meeting approved the papers.

Solicitation of membership in the Independent began among the employees as soon as the membership cards were available, about June 18th. Generally the employees did not solicit or sign membership cards on company property or during working hours, but in some instances solicitation occurred in violation of the rule.* On the other hand, AF of L and CIO organizers, and employees who were members of unions affiliated with those organizations, also discussed and solicited for those unions among the employees on company property and during working hours.**

(f) First Elections

Pursuant to the Constitution and by-laws of the Independent nomination of candidates for the division committees was made throughout the properties on July 2nd, and the election from such nominees was held throughout the properties on July 12th. The proceedings both at the time of nomination and at the time of election were conducted off company property, not during working hours and by elaborately secret ballots.***

As a result of these elections the official personnel of the Independent was for the first time created. Accordingly the provisional Steering Committees which had theretofore acted in Norfolk and in Richmond were dissolved and the new representatives proceeded to complete their inter-depart-

---

* R. 155-156, 193-197, 205-206, 600-602, 629, 645-646, 683-684, 728, 737, 805.

** R. 156, 178-179, 669-670, 684, 699-700, 709-710, 730-733, 793-794.

*** Intervener's Ex. 39, R. 938 [introduced at R. 750]; Intervener's Ex. 41, R. 944 [introduced at R. 751]; R. 79-80, 602-607, 648-652, 684-685, 698-699, 805, 807, 808.

mental organization as contemplated by the Independent's constitution.*

It appears that the Independent had a large majority of the men in all departments of the Company at the time of this nomination and this election. Thus 1912 men voted in the nomination and 1885 in the election. Indeed the evidence is that a majority of the men had signed up for the Independent by about the 1st of July.**

(g) Formulation of Demands by the Independent

The newly elected representatives made an intensive canvass of their respective "voting sections" to ascertain the wishes of the men for demands to be made on the company in regard to wages and working conditions. These discussions were pressed with particular zeal because of a plan to hold a convention of representatives from the whole system at Ocean View, Virginia, on July 17th.***

This convention at Ocean View seems to have been very active and business-like. The representatives, having ascertained the wishes of their respective voting sections, met to compose their views into a common series of proposals. First the analogous divisions of Norfolk and of Richmond developed common proposals. These were then submitted to more general groups and so in turn to a single system meeting for all departments, which assembled the demands of the several groups and approved them in the form of one proposal. The meeting lasted two days. The final proposal was reduced to the form of a contract by Mr. White and

---

* R. 651-652, 807-808 and Intervenor's Exhibits 10, R. 893 [introduced at R. 606] and 42, R. 948 [introduced at R. 751].

** R. 710, 725, 733-734, 778-779, 787-788.

*** Intervener's Ex's 15, R. 895 [introduced at R. 606], and 29, R. 926; R. 605-607, 613-614, 652-655, 691, 711-712, 786-787.

approved in that form by the General Committee.* On July 19th the proposed contract was sent to the Company under a transmittal letter prepared by Mr. White (Board's Exhibit 5, R. 823 [introduced at R. 46, 47]; R. 46). This letter stated that the Independent had a membership of 2416, or 89% of all non-supervisory employees, and asked for an interview to discuss the enclosed form of contract.

(h) Negotiation of Contract With the Independent

On July 21st Mr. Holtzclaw answered the Independent's letter by requesting a certificate as to membership and agreeing to meet on July 30th (Board's Exhibit 6, R. 824 [introduced at R. 46]; R. 46). On July 26th the General Committee accepted that date and supplied a certificate showing a membership of 2429 (Board's Exhibit 7 [introduced at R. 47] and 7A [introduced at R. 61, 248], R. 825; R. 46-47, 61). Before the time of the proposed meeting Mr. Holtzclaw asked T. Justin Moore, General Counsel of the company, to make such investigation as he might deem appropriate to ascertain whether the Independent was a properly constituted bargaining agency with authority to represent the members claimed by it (R. 438-439). Mr. Moore accordingly made an inquiry of Mr. White and received in reply a letter dated July 27th summarizing the formation, organization and membership of the Independent (Respondent's Exhibit 13, R. 872-874 [introduced at R. 261]).

When the meeting convened on the morning of July 30th the Independent representatives produced for examination 2543 signed membership cards (R. 655-656) representing about 90% of all supervisory employees (R. 442-443). On

* Minutes, Intervener's Exhibits 16A-F, R. 896-901 [introduced at R. 609, 669]; R. 608-612, 654, 711-712, 734, 751, 768-769, 787, 805.

Mr. Moore's advice that the Independent appeared to be a duly constituted bargaining agency with authority to bargain for all the employees, the management proceeded with the meeting (R. 293-295, 313-314, 438-439, 459-460, 655-656, 717, 751-752).

The negotiations soon developed important differences of view which were vigorously maintained. At the very outset the company stated that it was unalterably opposed to any closed shop provision (requested by the Independent) and that the wage demands were fantastic. Having discussed the closed shop clause all morning without any progress toward agreement, the conferees passed on to the other general provisions of the Independent's proposed agreement* and then separated into four sub-committees for the respective departments of the company's business, *i.e.*, transportation, electric, gas and accounting-sales-and-general-office. These negotiations are described in detail by the participants.** These departmental negotiations continued throughout that afternoon and evening and all the following day until about ten o'clock in the evening. By this time substantial agreement had been reached on all points except two major issues, the question of wages and the question of the closed shop clause. The latter was vigorously demanded by the Independent on the ground that anything achieved by its activities would benefit all employees alike

---

* These included a clause requiring the company to accept an assignment from the Independent members authorizing deduction from wages for dues, to be paid to Independent less the cost of accounting. This was accepted by the company after modification to entitle every employee to revoke such assignment at any time. (See R. 49, 828.)

** Every step in the negotiations was covered by the testimony of the leading participants; Holtzclaw, R. 46-49, 446-447, 460-461; Smith, R. 259-266, 269, 291-306, 314; Jones, R. 324-326, 345-346; Throckmorton, R. 358-361, 368-370, 378-379, 384-385; Faust, R. 614-620, 655-659; Bertolett, R. 750-752; Underwood, R. 769; and Hough, R. 805; Respondent's Exhibit 14, R. 874 [introduced at R. 269].

and all should pay their share of the cost; the company however, was unwilling to agree that any man be compelled to join any organization. At this juncture the management representatives and Independent representatives separated in order to see whether some compromise suggestion might be found to meet the remaining issues. After protracted discussion, first separately and then jointly, agreement on both issues was made as follows: (1) the closed shop clause was to stand but be liberalized by providing that nothing in the agreement should "prevent or in any wise affect the right of any employee to join or remain a member of any other labor organization," and (2) wage increases should be granted on an intermediate figure. During all of the next day, August 1st, negotiations were again resumed, and continued until midnight, to formulate the text of the agreement. By that time an agreement had been drafted that was acceptable to both sides.

There can be no possibility of question from this evidence that these negotiations were aggressive, arm's length bargaining by each of the respective parties. The Independent representatives were shrewd and capable men, fully posted as to the facts surrounding the contentions they were making. The discussions were serious and energetic on each side, and at times acrimonious. Both parties yielded in various particulars in the process of arriving at a common result. The final contract differed in numerous provisions from the original proposal (R. 264-265, 300-301). The company was forced to concede far more than it desired or than it now desires. The cost of the wage increase amounted to approximately $600,000 a year (as compared with something over $1,000,000 a year under the original Independent proposals), and that was far in excess of anything that the company management had ever imagined might result from the negotiations, or had ever supposed might be agreed to by it (R. 265-266, 446-447, 460). That increase was solely the result

of the negotiations "and was not in the slightest degree the result of any predetermined idea of the company officials" (R. 446-447).* The closed shop proposal, even in its modified form, was also something that the company management never anticipated that it would agree to; and it does not like it now and wants to have it removed from the contract (R. 264-265, 296-297, 314, 446, 460-461, 619).

(i) Execution of Contract

Not only were all the members of the General Committee of the Independent present throughout the above negotiations, but also all of the division committees were present for a good part of the time and for all of the last day (R. 658-659). After the conclusion of the negotiations the respective division committees met that night in Richmond and formally accepted the contract that had been developed in the negotiations (R. 620-621, 658). In spite of the plenary power of the division committees, the form of contract was reported to the men for an expression of their views before its signature. It received their overwhelming approval.**

On August 5th the members of the Independent's General Committee again met with the management and the contract was signed.***

---

* This statement is doubted by the Board (R. 968), but no contrary finding is made.

** Thus see Faust, R. 620-621, 658; Tatem, R. 717-718; Steele, R. 738; meeting of Norfolk inter-departmental committee on August 4, Intervener's Exhibit 30, R. 926-927 [introduced at R. 712[; and R. 712; and written assent of majority of Norfolk transportation men R. 442-443, 805-806.

*** The agreement as executed (Board Exhibit 9, R. 826-839 [introduced at R. 48, 53]; R. 52-53) included a recognition of the Independent as the bargaining representative for all employees and permitted the Independent to set up bulletin boards on company property (Section A); required membership after 90 days as a condition to further employment, but with full permission to join or remain a member of any other union (Section B1); provided for a check-off on individual, revocable assignments (Section B2); regulated discharges

(j) Subsequent History

Shortly after the execution of the contract on August 5th the Independent established grievance committees for its respective voting sections. They began work at once and have handled a large number of cases all over the system.*

On August 20th the company paid the Independent $3,784.50 as required by the check-off provision in the contract and the individual assignments by the men which had been delivered to it.** Obviously this sum had then been already earned: it represented the mid-year half of the annual dues (Board Ex's 26 [introduced at R. 173] and 36 [introduced at R. 247], R. 843 and 855) or $1.50 per man; the contract had been signed two weeks before (August 5th) and the assignment cards had been delivered as early as July 30th (R. 655-656). It is clear, therefore, that the various assignors had a claim against the company in excess of $1.50 per capita and no credit was given by the company. The question of the date when the actual deductions were mechanically made on the books was purely a matter of the company's own convenience. This payment accordingly involves no support for the union, as the Board would have it appear (Decision, R. 967, Brief, p 6); nor was it

---

(Section B3); required time and a half for overtime (Section B6); provided for arbitration of grievances (Section B7); and established elaborate provisions for basic wages (at a material increase) and terms and conditions of service for all departments (Section C, D, E and F); the agreement to begin as of June 1, 1937, and continue for one year and thereafter from year to year subject to termination by either party upon notice before any annual period (Section G).

* R. 156-157, 561-562, 577-582, 621-624.

** Board Exhibits 9 (R. 828) [introduced at R. 48, 53], 26 (R. 843) [introduced at R. 173], 36 (R. 855) [introduced at R. 247], 53 (R. 860) [introduced at R. 779]; R. 779. The transmittal letter of August 20th (R. 860) declared that the Company was "arranging to have pay roll deductions made during the month of August from the pay checks of the employees involved." A check-off provision is, of course, lawful (*L. Greif & Bro., Inc.*, v. *N. L. R. B.*, 1939, CCA 4, 108 F. (2d) 551, 557).

an "anticipation" of the Independent dues, as the Board argues (Brief, p. 26), for they were then past due (Board Exhibit 36, R. 855 [introduced at R. 247]).

Notice of the provision of the contract requiring all existing employees to become members within 90 days after its date was given to all employees by posting a bulletin throughout the properties under date of October 28th (Board's Exhibit 41, R. 858 [introduced at R. 514]; R. 309-310). On November 4th the terms of that contract provision were again posted (Respondent's Exhibit 9, R. 861). By that time in fact all employees had become members of the Independent except two, Elliott and Staunton, whose employment came to an end at that time as explained below (R. 267-268).

Meetings of the departmental committees and of the respective voting sections of the Independent appear to have been held regularly throughout the entire period since the execution of the contract.*

Before the expiration of the first year of the contract (which continued in effect from year to year unless terminated by 30 days' notice before the end of any annual period), the management and the Independent met on April 29, 1938, to discuss renewal or modification. It appeared that each party desired extensive modifications. The most important of these by the Independent was a request for a new large wage increase and by the company a renewal of its original request for elimination of the closed shop clause. It was arranged to meet again on May 9, 1938, for further discussion, but on that very morning the complaint in this proceeding was served and both parties agreed to suspend negotiations. Thus the contract automatically came into effect for the next year.**

---

* Intervener's Exhibits 19-A-P, R. 903-912 [introduced at R. 624]; R. 577-582, 623-624.

** R. 306-307, 310, 439-442, 628-629, 657-658.

(k) Authenticity of the Independent

The foregoing summary is believed to indicate all of the principal events in the history of the Independent. The uncolored words of that simple narrative show that the Independent was created by free and deliberate decision of an overwhelming majority of the men themselves. In the initial groping for some plan of organization the men met on company property, but not, so far as the record shows, with any permission from the supervisors except for initial gatherings when reports of the May 24th speech were made. Spontaneously and universally the desires of the men were strong for an unaffiliated union. Their desires were demonstrated by meetings and signed letters of authorization which leave no doubt as to the authenticity of that expression. Remarkably full and informative minutes were kept of most meetings and all such minutes are in the record.*

---

* These contemporary records are an impressive chronicle and it may be to the convenience of the Court to have them indexed; references are to Intervener's Exhibits unless otherwise specified:

1. May 26; Norfolk; Cove Street garage (Ex. 3), R. 888 [Introduced at R. 589].
2. June 1; Norfolk; general office building (Ex. 4), R. 889 [Introduced at R. 592].
3. " 1; Richmond; general office building (Ex. 33), R. 928 [Introduced at R. 745].
4. " 3; Petersburg; office building (Board Ex. 19), R. 839 [Introduced at R. 111, 248].
5. " 7; Norfolk; general office building (Board Ex. 20), R. 841 [Introduced at R. 248].
6. " 9; Richmond; (place not shown) (Ex. 35), R. 932 [Introduced at R. 746].
7. " 11; Norfolk; general office building (Ex. 6), R. 889 [Introduced at R. 595].
8. " 14; Norfolk; Reeves Avenue (Ex. 31), R. 927 [Introtroduced at R. 723].
9. " 15; Richmond; American Legion Hall (Ex. 22), R. 915 [Introduced at R. 681].
10. " 16; Norfolk; Navy Y. M. C. A. (Ex. 7), R. 981 [Introduced at R. 596, 598].

(Continued on next page)

Proceeding in their own way the men established contact between Richmond and Norfolk and engaged a lawyer of their own choice who had no connection with the company. He prepared a form of constitution and by-laws which, after discussion and revison by the committees established by the men, was adopted by them on June 15th. From that moment on, the affairs of the organization have been conducted with the utmost formality and secrecy; no meetings were held on company property (R. 694, 808); no indication was ever given to the company of what was taking place. All of the Independent's members are strictly non-supervisory employees (R. 759-760). Indeed it is obvious that, mindful of the general conviction that unaffiliated unions are the subject of painstaking scrutiny by the Labor Board, the men were zealous to avoid anything that might even be made the object of any question by hostile interests. So far from having any knowledge or notion that the com-

11. " 22; Norfolk; Blair High School (Ex. 8), R. 891 [Introduced at R. 598].
12. " 23; Richmond; American Legion Hall (Ex. 38), R. 934 [Introduced at R. 750].
13. " 28; Norfolk; Navy Y. M. C. A. (Ex. 9), R. 892.
14. " 29; Richmond; IOE office (Ex. 39), R. 938 [Introduced at R. 750].
15. July 6; Richmond; IOE office (Ex's 40-41), R. 943-944 [Introduced at R. 751].
16. " 13; Norfolk; Monticello Arcade (Ex. 10), R. 893 [Introduced at R. 606].
17. " 16; Richmond; IOE office (Ex. 42), R. 948 [Introduced at R. 751].
18. " 16; Norfolk; parking lot (Ex. 15), R. 895 [Introduced at R. 606].
19. " 17-18; Ocean View; hotel (Ex. 16), R. 896-901 [Introduced at R. 609, 669].
20. " 26; Norfolk; Monticello Arcade, (Ex. 17), R. 901 [Introduced at R. 612].

Other authorizations are those of June 3 to Tatem (R. 706-707) and the written acceptance of the Independent contract by the Norfolk Transportation men (R. 442-443, 805-806). Organizers having anything to conceal do not record their actions in such detail.

pany would recognize the Independent in the negotiations of July 30th, the General Committee was discussing with its counsel on the night of July 29th what steps they would take, including proceedings before the Labor Board, in the event of a refusal to recognize (R. 657, 671). The conduct of the Independent in the establishment of its officers and committees, negotiations with the company and administration of its own business, is so patently uninfluenced by and independent of the company that no intelligent question of it can be made. It would be hard, indeed, to imagine a more independent and aggressive organization.

These conclusions which are inescapably obvious from the history itself were illustrated by specific testimony of Independent members who were most intimately and continuously familiar with its proceedings. In its whole history they knew of no favor, support, assistance, influence, interference or domination by the company, or any effort at any of those things, and every penny of its funds came solely from the contributions or dues of its members.*

6. Treatment of the Independent by the Board

The Independent received short shrift from the Board. Three pages sufficed to tell the story and to pronounce sentence. Such brevity was made possible by omitting any reference to the multiple manifestations of employee choice exhibited in the various meetings and authorizations summarized above. It was facilitated by a liberal use of inference irrespective of the evidence. But analyzed, the decision of the Board and the brief filed in its support rely, aside from matters dealt with in the later sections hereof, only on four main theories: (1) a claim that the May 24th meeting provided the "initial impetus for subsequent organization",

* R. 630-631, 658, 668-669, 671-673, 685-686, 714, 753, 758-760, 769, 784, 785, 807-808.

(2) an inference that because the Independent men were quick, therefore they were coerced, (3) an argument that certain uses of company property necessarily invalidate the organization and (4) a claim by the Board's counsel on brief that inclusion of terms for check-off and closed shop in the Independent agreement was aid by the company.

(a) The Claim of Initial Impetus

The May 24th meetings have been sufficiently discussed at pages 15-25 above. The addresses being non-partisan, it is not true that they supplied any "initial impetus (R. 964-967) except at most in the sense that one who tosses a coin provides the "initial impetus" for a decision. The statement of the current problem did no more than give the men an opportunity for action; it did not predetermine or influence the nature of the decision that might be made, whether to form any organization, or if so, what kind of organization to form. The statement in the Board's brief (p. 41) that by admission of the company "the Independent came into being as an immediate result of these company meetings and addresses of May 24" is untrue, both as a statement of the cited source (Board Decision, note 16, R. 965) and as a statement of the fact. The Board's note claimed only an admission that the May 24th speech gave "impetus to the formation of the" Independent. The only basis for that claim was a statement of counsel in oral argument, consistently with the above argument in this brief, that the May 24th address "did give impetus to something being done," but not to any particular form of organization.* Nor can it be said that the May 24th addresses embodied a choice by the employer as to the organizing moment. On the contrary

* Official Report of Proceedings before the Board in Washington, D. C., April 13, 1939, at pp. 66-A-66-B.

the employer was at that very moment a victim of an unexpected and unmanageable situation creating an apparent necessity for negotiation in the absence of any practical vehicle for negotiation. All that the May 24th addresses did was to state this current problem to the men and state the willingness of the company to abide by whatever their choice might be.

But if it should, contrary to the fact, be considered that the May 24th addresses did indicate a company preference as between organizational forms, nevertheless they unequivocally declared the complete liberty of choice of the men. That being so, they do not constitute an unfair labor practice (pp. 26-36 above), which alone the Board is empowered to remedy.

In either event, therefore, the claim that the May 24th addresses supplied an initial impetus fails to make out an unfair labor practice within the meaning of the Act and thus provides no support for the Board's order.

(b) The Calendar

The calendar is then made to say (R. 967-8) that since the time within which the men acted was relatively short, their choice could not be authentic, but if that be true, then the more vehement the feeling the less effect it will be allowed; a complete conviction will be wholly disregarded. Doubtless there are circumstances in which speed of action may suggest lack of thought or lack of choice but no such inference is permitted by the concrete circumstances of the meetings that have been briefly summarized above. Their very artlessness and the diversity of means by which choice was ascertained are proof of their authenticity. No demonstration of general view could have been more spontaneous or more irresistible. In such circumstances, if sentiment was obvious at once in all departments except one, and obvious in that

one by the end of three weeks, that should confirm the veracity of the choice rather than disparage it.*

The Board also implies that recognition and agreement by the company were speedy. But the preceding discussion has shown the elaborate documentary evidence on which the company consented to negotiate with the Independent and the earnest negotiations in which the agreement was developed. There is no basis for any charge of speed. When the Independent had, as it did, a majority of all the employees in its membership, there was no reason or justification for delay (*N. L. R. B.* v. *Arma Corporation*, 1941, CCA 2, 122 F. (2d) 153, 156). Even, however, if the company had "made haste," this would not have been in itself "a sufficient factual basis for the finding of interference, domination and support" for such evidence "is not inconsistent with the contrary hypothesis, and therefore supports neither" (*Cupples Co. Manufacturers* v. *N. L. R. B.*, 1939 CCA 8, 106 F. (2d) 100, 114).

(c) Company Property

Unquestionably the men were meeting on company property for their discussions in the early preliminary stages before any definite organization was formed. But there are certain important limitations on that statement which are not mentioned by the Board.

In the first place, there is no evidence that any one in supervisory position gave any permission for any meeting whatever on company property, or otherwise "cooperated"

---

* Thus the court below had previously declared (*N.L.R.B.* v. *A. S. Abell Co.*, 1938, 97 F. (2d) 951, 957):

> "There is, however, no justification for the position that spontaneous action on the part of the men is so improbable as to warrant the inference that it was inspired by the management."

See also *A. E. Staley Mfg. Co.* v. *N. L. R. B.*, 1941, CCA 7, 117 F (2d) 868, 875.

(Board's Brief, pp. 5, 9, 23, 27, 34, 35 and 36) in respect of any such meeting, except only for two meetings. Those two meetings were called by two delegates to the May 24th meetings for the purpose of making a report to their men on what had been said at the May 24th meetings and of soliciting their views. This limitation is not mentioned by the Board. Indeed the very opposite is implied or stated (e.g., Brief pp. 27, 34, 35 and 36). Similarly the Board does not mention that there is no evidence of any employees leaving their work for any meeting except in the case of only one of the two above meetings.*

Even in these two instances of consent to meetings on company property, there are important qualifying circumstances. In the one case, the supervisor was not told the purpose of the meeting (R. 727-8) and it was held in an auditorium in the Norfolk generating station which is in part maintained by dues from the men and used by them for social purposes (R. 719-20, 722). In the other case, a meeting called by Holzbach among the Richmond distribution employees, permission was first refused and then granted only for the following reason:

> "I was first turned down, and when I told them that I only wanted the hall to explain the Wagner Act to those who had not been present at Mr. Holtzclaw's meeting, the auditorium was granted me" (R. 791).
>
> "The argument he used was that he was primarily elected as a delegate to find out something and he was

* In that case the men did not actually leave their work but were allowed to start late (R. 797-8). All references cited in this connection by the Board (Brief, text of p. 23) are to that one meeting or to a reading of the May 24th address to certain employees who had accidentally not been notified of the May 24th meeting (R. 761). Superintendent Crafton ended the work day for his men "on time" (R. 676 and page 40 above), not ahead of time as Board's Counsel argue (Brief, Note 11, p. 23).

> coming back to report and he felt it his responsibility to render a report under the circumstances" (R. 742).

The supervisor's reply to Holzbach is of particular interest, and it should be remembered that the reply was made at a time when the organizational views of the men were not known; Holzbach testified (R. 798):

> "I was told that we could use it [the company auditorium] up until we began to organize. Mr. Walke said 'The Government does not let us assist you in any way, shape, form or fashion. I do not mind you using the auditorium, but when you start organizing you will have to stop it.'"

All use of company property for any other meetings was unauthorized. This fact is disregarded by the Board, on the assertion that numerous newspaper articles advised the company that such meetings were being held (Decision, R. 968). The Board, however, does not say that newspaper articles advised the company *where* the meetings were being held. Doubtless this was deliberate on the part of the Board, because no newspaper made any statement that any meeting was held on any company property in Richmond, and aside from meetings on two days in the Transportation Department Y. M. C. A.,* only one meeting on company property was mentioned in Norfolk** (Respondent's Ex. 11, R. 862-

---

* As already indicated, these quarters were in part maintained by dues from the men and were used for general recreational purposes (R. 327-8). The meetings, moreover, were concerned with a proposed organization of Elliott's, and not with the Independent.

** This was the meeting of June 1st, which dealt almost entirely with Elliott's proposal for an EAC, which was proposed by him in competition with the Independent; all the discussion was of a very preliminary character and no conclusion was reached (page 43 above). If the Board's brief (Note 25, p. 36) means that there were newspaper references to the place of any other meetings (on company property), it is not correct (Respondent's Exhibit 11, R. 862 [introduced at R. 247]).

871 [introduced at R. 247]). Thus there is no basis for the Board's assertion of general acquiescence by management.

If there had been a design on the part of the company as the Board asserts, to stimulate a union of *its* own choosing, it can hardly be supposed that the company would have chosen to defeat its own end by permitting the use of company property. Mr. Holtzclaw had already announced in the May 24th address that the Act prohibits a company from interfering with the formation of any labor organization or contributing support to it. The Board's special suspicion of company property use is well known. So if he was conniving at the birth of a dominated union, he would hardly choose it to be still-born. The Board does not mention this inconsistency of its assumptions.

Moreover, such use of company property was made only in the first tentative groping for a plan before any effective decision was made. Management could not have known what the outcome of these preliminary discussions would be, so even if it had been conscious of the property use and could thus be said to have permitted it, such permission would have been without meaning. From the point of view of the men, the very act of meeting on company property to consider formation of an unaffiliated union proves that their action was not according to any fixed, prior design. The Board does not refer to these considerations. One of Mr. White's first acts after his retainer on June 5th was to advise the men not to meet on company property; "I told them the matter [the Board's doctrine] had been carried to what they might regard a ridiculous extent, but it was a fact, and so I advised them accordingly;"* such use was discontinued in Richmond at once and in Norfolk from and after June 15th, when Mr. White first had direct contact with them. *There has never been any meeting on company property*

* Official Transcript of Argument before the Board, pp. 31-33.

since that time. This was indeed stipulated by counsel for the Board (R. 807-808). These facts are not mentioned by the Board.

In the zeal of an organizational campaign among 3000 employees it is inevitable that some of the men will be solicited on company property in working time. Prohibitions against such action can not be absolutely enforced. Of course there were instances of this in the Independent campaign, notwithstanding the position of management that no organizational activity of any nature should be permitted on company property or company time* and the similar position of the leading men in the Independent movement.** But such action could have no significance on the question of an unfair labor practice unless it were so loud and general as to proclaim support by management. There could be no such argument on this record. On the contrary, management instructions were clear and uncontroverted, the violations were of merely incidental nature and were committed by the complaining unions*** as well as by the Independent. Since there was substantial solicitation on company time and property for the complaining unions, the Board is not entitled to balance (as it attempts in its brief, note 26, pp. 36-37) the amount of such solicitation against the amount of Independent solicitation and to disregard the

---

* This was one of the instructions to all supervisory personnel on May 25th (R. 289-290, 319-320). No violation of these instructions was ever brought to the attention of management until the complaints by the Board.

** This was one of the instructions by Tatem at the June 16th meeting in Norfolk (R. 596-598, 645-646). This rule was generally understood among the men (R. 728); and generally followed (R. 600-602, 683-684, 737).

*** R. 155-156, 178-179, 669-671, 684, 709-710, 730-732, 793-794. The Board cites similar management instructions to two earlier outside organizers (Decision, Note 17, R. 965), but tells only half the truth: the full management reply to the organizers was that they were perfectly free to do as they wished but not to solicit on company property or time (R. 350-351, 370-372, 428-429, 448).

former on the ground that the latter was quantitatively greater. It is not clear indeed that it was greater, but if so that was only because there was more interest in the Independent. There is no claim that any solicitor for the complaining unions was stopped from use of company time or property in any case during the whole organizational period.*

The Board's comment on the use of telephones is equally misleading. The company has a private telephone line between Richmond and Norfolk for company use. It is very frequently used by switchboard operators in the course of their duties and by employees in the system operator's office. There is also a carrier current circuit for telephoning over the transmission lines. The evidence indicates that these lines are frequently availed of by the employees, contrary to rule, for personal communications, without permission.** In the early days before the definite organization of the Independent the men used these lines occasionally in regard to organizational matters. But there is no claim that this was with the knowledge or acquiescence of management. So it is misleading for the Board to argue (Brief, p. 27) that such facilities were used "freely;" it would have been more accurate to say "clandestinely."

The final comment of the Board in this connection is of a similar nature. "The bulletin boards of the respondent" were used "freely," the Board says, by the steering committees during the preliminary stages (Decision, note 17, R. 965). This however, is a plain inadvertence. In the whole

* The Board's claim (Brief, note 26, p. 37) that one Independent solicitor "openly conducted his drive on company time and property for over a month with no reprimand" is a distortion of the record. That witness (Reutt) was not a person of any prominence in the Independent; it was not shown how many men he solicited or signed; he testified that he was not interested in the undertaking; and he had no recollection of ever handing out any membership application cards when any foreman or supervisors were present (R. 76-77).

** R. 719-721, 725-726, 765-766, 780.

record there is no suggestion of any such use except *before* the formation of any "steering committee," and then only by one individual who had no authority of any kind: Holzbach, a representative at the Richmond May 24th meeting, who acted as temporary chairman after executives left, felt entitled to report the substance of Mr. Holtzclaw's speech, and thus on his own responsibility obtained permission to post a bulletin for a report meeting on May 26th (R. 756, 795-796).* The Board's comment is thus a misstatement of the record.

There is no basis in the record for any finding as to use of company property or facilities except in a casual, incidental and unauthorized manner at a time prior to the decision on the course to be followed. If the Decision purports to find greater use, there is no basis for such finding. If the Decision means that even such use is under the Act an incurable, permanent infection, it perverts the practical objectives of the Act into unjustifiable artificialities.

(d) Closed Shop and Check-Off

To these three thin circumstantial suspicions on which the Board relies, its counsel now add on brief a claim that the provisions of the ultimate agreement for a check-off and closed shop are "significant factors evidencing the company's desire to aid the Independent" (Brief, p. 38; not relied on by the Board in its Decision). In support it is asserted that the Board has often held the grant of such privileges "in circumstances such as these" to constitute prohibited interference and support (Brief, p. 39). Since the

* Surely the Board does not have in mind the notice posted by Reutt (R. 64-65) of a meeting on May 11th to hear Elliott read the Act (R. 94-95, 139-141, 153-154, 161), for that had nothing whatever to do with the Independent, but, as the court below held, was "another organization . . . and impeded rather than helped the organization of the" Independent (R. 1015).

Board is the author of the cited rule, the tacit refusal of the Board to apply it in the present case is not to be overlooked. Beyond that, the argument is equivocal. It would certainly not be made if the recognized union had national affiliations, for such contract terms are commonly sought. And if the Independent had not succeeded in achieving these two desired contract terms, Board counsel would doubtless have argued that its failure to do so was symptomatic of the powerlessness natural to its position as a creature of the company's will. The Board's decision can not be much fortified, therefore, by a claim of Board's counsel, not made by the Board itself, that the success of the Independent in negotiating a closed shop clause that was opposed and is still opposed by the company demonstrates incapacity to act for the men.

(e) Conclusion

The Board does not discuss or give any weight to the multiple manifestations of spontaneous choice on the part of the employees that have been summarized hereinabove. Nor does it even mention the form of the organization of the Independent, as particularly illustrated by the text of its constitution, which are manifest demonstrations of effective independence. Nor does it consider the detailed evidence as to the negotiations of the contract. Nor does it mention the fact that the administration of the Independent since negotiation of the contract has been so patently independent that no effort at proof or claim to the contrary has been made. The Board thus disregards uncontradicted and unimpeached testimony in order to substitute sheer supposition.

So the court below was right in holding that

> ". . . there is nothing to show that the employees' association does not represent the free choice of the employees, that the company at any time dominated or

in any way interfered with the employees in setting it up or that the company exercised over it any control or domination whatsoever." (R. 1008)

The Board's order of disestablishment was therefore properly set aside.

7. Other Claims of Interference

The claim of interference with organizational liberty in violation of Section 8(1) is, it would seem, only incidental to the main issue of the case, the question of domination of the Independent in violation of Section 8(2). The only two episodes distinctly asserted as violations of Section 8(1) (aside from the discharges dealt with below) are the 1936 questioning by Bishop (dealt with on p. 8 above) and certain conduct by a supervisor Edwards, which is unrelated to the main narrative and is dealt with here.

Edwards was one of 10 "supervisors" in the Norfolk transportation department (R. 385-386), no complaint being made against any of the others. First the Board says that Edwards stood across the street from a CIO meeting place; perhaps he did,* once when he was calling on the doctor of his fraternal lodge and once when he was waiting for his street car, but in neither case did he ever make any report concerning the matter to any one (R. 411-412, 418-421, 423-425). There is no indication that this action had any effect upon the men: Adkins, one of the witnesses asserting such "surveillance," joined the CIO in May, 1937 and joined the Amalgamated in December, 1937 (R. 235); in the early part of 1938 he was elected President of the Amalgamated; he still occupies that position and is still employed

* But even if so, this would not in itself violate Section 7 (*N. L. R. B.* v. *National Motor Bearing Co.*, 1939, CCA 9, 105 F. (2d) 652, 657); actual attendance at a meeting does not necessarily violate Section 7 (*N. L. R. B.* v. *Swank Products*, 1939, CCA 3, 108 F. (2d) 872, 875-6).

by the Company (R. 236). The next complaint is that Edwards warned Smith that he might lose his job by staying with the CIO. But this did not disturb Smith; he joined the CIO in May and became its Recording Secretary (R. 164-165); he remained such until it disintegrated in August and September, 1937, from lack of interest among the men (R. 245-247). After that Smith joined the Amalgamated and became its Financial Secretary (R. 151, 164-165). Smith had seen the April 26th bulletin before his conversation with Edwards; he saw the June 24th bulletin after his conversation with Edwards (R. 167); and his conversation with Edwards did not deter him from joining a union as freely as he chose (R. 165). Smith is still employed by the Company. Hopkins testified of a similar warning but showed a similar experience; he joined the CIO in May, 1937, was so active in getting new members that his position was generally known and is still a member (R. 149); in March, 1938, he joined the Amalgamated (R. 151); and he is still employed by the Company (R. 150).*

It is perfectly clear that these are a mere collection of complaints in an effort to pin something on the company and that they had no actual influence on the conduct of the men. That can not be the kind of practical situation for which the Act was intended to provide a remedy.

It is well, too, to view these collateral incidents with some sense of proportion for the whole case that is involved. The Court will recall that the company's properties extend over a considerable territory in tidewater Virginia and northeastern North Carolina, and that it has approximately 3400 employees, of whom some 400 are in a supervisory position. Despite archeological exploration of the Independent's files

* At the most this evidence is quite different from the claim made in the government's brief that Edwards "kept 'outside' union meetings under surveillance" (Brief, pp. 5, 10, 28, 35-6), which seems to indicate a settled course of continuous conduct.

in 1937-38 and four weeks of inquisition at a public hearing, no claim of intimidatory conduct is made in any community except Norfolk, and even there the attack really centers on only two men, Mr. Bishop and Mr. Edwards, and against them only in respect of an early period, probably only in May.* Even if the testimony of Board witnesses should be accepted at its full face value (to which it is clearly not entitled), the result would still be a clear demonstration that, as a practical matter and as things are handled in large groups of men, the company's policy of detached neutrality was conscientiously and with remarkable approach to unanimity followed by its supervisory representatives and must, therefore, have been manifest to the men.

There is no occasion, however, for any inferences of fact by the administrative tribunal or debate of *respondeat superior* by its counsel, for the company's policy was conspicuously published by executive announcements overriding any possible different inferences from the conduct of minor supervisors. Prior to the incidents in question, the April 26th bulletin had proclaimed "the right of every employee to join any union that he may wish to join, and such membership will not affect his position with the Company"; about the time of those incidents the May 24th addresses made it "perfectly clear . . . that no employee will be discriminated against because of any labor affiliation he desires to make." And after these incidents the June 24th bulletin reannounced

---

* Mr. Bishop testified that he never even conversed with any of his men on organizational subjects after May 25th (R. 406-407, 410). Mr. Bishop was quite clear that the management instructions of May 20th and May 25th were "not to interfere with the men in any way, shape or form" and that he promptly transmitted these instructions to his supervisors and that these instructions were obeyed (R. 388-389, 397, 411-412). It is uncontradicted that no complaint of any violation of these instructions was ever made to the management until made by representatives of the Board long after the event in issue (R. 258, 342-343, 456). If one had been made of Mr. Bishop, and had been found to be true, Mr. Bishop would have been reprimanded or, on repetition, discharged (R. 288-289).

the absolute "right to self organization, to form, join or assist labor organizations and to bargain collectively through representatives of their own choosing." One of these messages was orally delivered by the President or a Vice President; each of the others was published in writing over the President's signature on every bulletin board throughout the properties.

In the face of these executive statements it is impossible that the alleged conduct of these minor supervisors, even if occurring as alleged, could have been accepted by the men as exhibiting the company's position; in that particular setting, such conduct was not "reasonably likely to have restrained the employees' choice" and the company may not "fairly be said to have been responsible" for any such conduct, so it does not afford "a proper basis for the conclusion that the employer did interfere" (*N. L. R. B.* v. *Link-Belt Co.*, 1941, 311 U. S. 584, 599).

The Board's order in respect of domination (Section 8(2)) and intimidation (Section 8(1)) was thus pro[illegible] set aside.

B.
THE ISSUE OF DISCRIMINATORY DISCHARGES

The Board finds that four men were discharged because of their participation in organizational activities. This number, as compared with a total of about 3400 employees (R. 458), hardly suggests a campaign to suppress civil liberties. The men are considered individually below.

1. Transportation Department

The two men that the Board finds to have been discriminatorily discharged are Mann and Elliott.

(a) MANN

Mann was discharged because of his offense against essential discipline. The Board makes such an urbane and decorous understatement of this offense as to eliminate its real meaning. The facts were that Mr. Bishop, superintendent of the Norfolk transportation department, was sitting in the dispatcher's office. The dispatcher was at his desk and some 10 or 15 men were standing around. Mann came in and said in a loud and angry tone, "Anybody seen this guy Bishop around here"? The dispatcher said "Mr. Bishop is sitting right over there." Mr. Bishop heard all this and looked up from his paper at Mann. Mann saw Mr. Bishop but turned and left without any word of regret or apology (R. 392-394, 407-410, 442-447). The same account of the incident was given by the dispatcher and by three of the employees present (R. 811-814). Mann himself admitted that the tone of a remark and the situation in which it is made and the number of people present give character to an incident and that it would be most unusual for any employee to come to Mr. Bishop in the presence of a number of other employees and refer to him loudly as "that guy Bishop" (R. 145-146). The Board, however, suavely omits these coloring circumstances from its recital. But they were not unperceived by the men who were standing around; they heard what went on and looked at Mr. Bishop with a smile; the next day he knew of a good deal of talk among the employees about the event. He testified that "in all my experience in handling men I had never heard my name mentioned that way by the men, or outside either, so far as that is concerned" (R. 392-394).*

---

* The question whether Mann intended any "affront" to Mr. Bishop, as the Board inquires (Decision, R. 920; Brief p. 50) is irrelevant. Whatever his advance intention, he was in fact highly disrespectful in a public way, and upon knowing this refused any word of explanation or apology then or later.

Mr. Bishop testified that he was not in the least influenced by any union affiliations that Mann might have had and indeed had no knowledge of any such affiliations (R. 392-394). On the contrary, Mr. Bishop reported the event as a sheer instance of impertinence to Mr. Throckmorton, Norfolk Vice President, adding that Mann's record was not such as to make him overlook the offense (but indeed was very poor because of many accidents),* and Mr. Throckmorton initiated the decision for the discharge; the question of union activities was not discussed in their conversation and Mr. Throckmorton had no idea of what union activities, if any, Mann may have been engaged in.** Mr. Bishop therefore discharged Mann, telling him at the time that it was because of his impertinence*** which he had not apologized for (R. 394, 407-408).

The Board disregards this impregnable evidence because Mr. Bishop offered no explanation why his son was present at a meeting in the company Y. M. C. A. barber-shop when Mann advocated the CIO (although Mr. Bishop said that he had never had any information from his son on this matter) and because of Mr. Bishop's "admission" that he "questioned" 15 men in 1936 (an admission which, as already shown, the record does not contain****). But this ap-

---

* In the 10 months of his employment Mann had 25 different accidents (Respondent's Exhibit 46, R. 888 [introduced at R. 571]), costing a total of $430.00. Aside from the money involved this was an extraordinarily bad record and indicated that Mann was accident prone (R. 571-572). The Board disregards this evidence on the ground that Mann was not warned when the accidents occurred. The uncontradicted evidence, however, shows that he was warned 3 times, the last time only 3 weeks before his discharge (Respondent's Exhibit 46, R. 888 [introduced at R. 571]).

** R. 361-364, 380-381.

*** So shown by the personnel record (Respondent's Exhibit 46, R. 888 [introduced at R. 571]) and admitted by Mann (R. 143-144). Mann's action was on May 27; he was discharged on June 1.

**** See page 8.

proach, by which the Board finds discrimination by attacking the credibility of Mr. Bishop (both in its Decision, R. 970, and in its Brief, pp. 50-52) is not only arbitrary on the facts but beside the point. The uncontradicted testimony both of Mr. Bishop (R. 409) and of Mr. Throckmorton (R. 361-2), the company's vice president in charge of operations in Norfolk, shows that it was Mr. Throckmorton, on a report from Mr. Bishop, who made the decision for the discharge. Thus the record shows (R. 361-2):

> "A. Mr. Bishop told me that he was rather bothered about one of the operators, and I asked him, 'What is the matter?' He related his case to me. I said, 'Well, what is his record?' He said, 'He has a very poor record.' I said, 'Well, why don't you let him out?' And he was let out.
>
> "Q. What did Mr. Bishop say he was bothered about?
>
> "A. He was very disrespectful. He recited the instance to me, that Mann had come into the dispatcher's office. He was sitting back with the dispatchers, and in a very—I do not what kind of tone—but he said, 'Anybody seen this guy Bishop around here?' And Bishop says the dispatcher turned to him and said, 'Ask Mr. Bishop. He is sitting over here.' And Mann walked out.
>
> "To me it was just a pure case of an unruly employee, and I told Bishop to fire him.
>
> "Q. Was anything said whatever between you and Mr. Bishop on the point as to whether or not Mr. Mann had ever engaged in any union activity?
>
> "A. Not a thing.
>
> "Q. Did you have any idea as to whether he had any union affiliation?
>
> "A. I did not recall who the operator was until a letter came in from Mr. Schauffler making the complaint. I think the letter was dated July 22nd, that the operator Mann had been discharged, and asking that an investigation be made, and I had to call Bishop to find

out why he was discharged, and he told me, 'He is the man you told me to fire'."

Even if it were permissible for the Board to utilize sheer suspicion in lieu of evidence, it should observe the fact that according to the testimony of Board witness Hopkins there remained at the time of the hearing about 140 members of CIO,* no others of whom were discharged; the fact that the Vice-President and the Financial Secretary of the CIO are still employed by the company** (R. 151); and the fact that there remain in the employ of the company about 75 members of the successor union, the Amalgamated, including all of its disclosed officers (R. 152, 160-161, 164-165, 232, 236).

The Board's exaggeration of the real proportions of the event is greatly increased by its counsel; they give a new role to the discharge. From a relatively inconspicuous event in the Board's Decision, it grows into a general proclamation by the company that union membership invites dicharge, a proclamation cunningly "timed" to have its maximum impress on organizational choice and commanding universal attention (Board's Brief pp. 5-6, 9-10, 28, 35, and 50-52). The new importance acquired by Mann since the date of the Board's Decision is doubtless due to the opinion in *National Labor Relations Board* v. *Link-Belt Co.*, 1941, 311 U. S. 584, and he is promoted for the strategic purpose of affording some semblance of similarity to the facts in that case.

But Mann was not shown or suggested to have had any position of importance or leadership among his fellows; on the contrary, he had been employed only for a short time (R. 139) and his only recommendation (to organize an affiliated union) was not followed by his fellows (R. 140-

* R. 151. This seems extreme; cf. R. 245-247.

** The President, Elliott, was discharged on other grounds, as explained on page 79 below.

141). Many other more important leaders for affiliated organization could have been selected, including all persons who later became officers in the CIO or the Amalgamated. At most, therefore, this could have been only a bungling effort to terrorize, but understandable because by uncontradicted evidence the discharging officers were wholly ignorant of what Mann's organizational preferences were, what course, if any, the men were pursuing, and whether that course was toward a national union or otherwise.*

The argument of discreet "timing" of the discharge (e.g., Board's Brief, Note 24, p. 35) has still less support. The interval between the events on May 27th and the discharge on June 1st was no greater or less than a natural opportunity to confer with Mr. Throckmorton, post a notice for Mann to report and receive a call from Mann. So far as concerns the organizational effort at that time, not only the uncontradicted evidence (see pages 40-46 above), but also the Board's Decision (R. 965) and Brief (p. 23) show that meetings of employees to determine organizational preferences had been held before that date in all departments of the company and that all of those meetings had already expressed a strong preference for unaffiliated organization. There was no possibility, therefore, even from the Machiavellian point of view imputed by the Board, of any benefit from witch burning after the event; the only possible consequence of such an act would be subversive of the imputed purpose.

The court below thus properly held that Mann's discharge is "shown to have been due to insubordination" and that

> "any conclusion that . . . union affiliation . . . had any connection with his discharge is pure speculation, unsupported by anything in the evidence" (R. 1017).

---

* R. 45-46, 49, 54, 59, 257, 258-259, 290, 436.

That summary aptly epitomizes the case and the Board's order of reinstatement was therefore properly set aside.

(b) Elliott

Elliott's employment was terminated because he did not join the Independent before November 3d, the final date within which the Independent contract required membership as a condition of further employment*. There was no inadvertence about this. Elliott knew of the contract requirement, in plenty of time to act, and his refusal to join was purely voluntary (R. 181, 183). There is no pretense by the Board that there was any other reason for his discharge.** But since the Independent was a lawful bargaining representative, the closed shop provision of the Independent contract was legal and valid under Section 8 (3) and the discharge pursuant thereto is non-discriminatory (*N. L. R. B* v. *Lion Shoe Co.*, 1938, CCA 1, 97 F. (2d) 448, 457).

But Elliott had already lost his job by the evening of November 1st whether or not he saw fit to create a further reason for that result. Six months earlier Elliott had had

---

* Clause 1 of Section B of the IOE agreement (Board's Exhibit 9, R. 826 [introduced at R. 48, 53]) provides in part as follows:

> ". . . the Employer hereby agrees not to retain in its employment for a period of more than ninety days after the date of this agreement any employee eligible for membership in the Employee Organization, unless such employee is a member of the Employee Organization." (R. 827-828)

A bulletin dated October 28, 1937, quoted these terms and advised that the 90 day period expired at midnight on November 3, 1937 (Board Exhibit 41, R. 858 [introduced at R. 514]); this notice was repeated by a further bulletin on November 4, 1937 (Respondent's Exhibit 9, R. 861). Elliott was discharged for failure to comply with that requirement (Respondent's Exhibit 20-B, R. 878 [introduced at R. 363]).

** But in fact there is an affirmative finding that there was no other reason (Decision; R. 972).

a bizarre and unusual accident on cash day, whereby over $100. of company money disappeared, and he remained away from work for two months although in bed (if at all) only for a week. On November 1st, two days before the effective date of the closed shop clause and likewise a cash day, Elliott had a still more fantastic accident,** producing no objective symptoms*** except the loss of $75. of company money. Elliott never came back to work after that. The manager of the Norfolk transportation department testified that Elliott's report of the November accident was a clear deception and that Elliott would have been discharged because of it if he had come back to work (R. 417-418). This evidence is wholly disregarded by the Board on the sole ground that Elliott was not disciplined for the April "accident"; the Board evidently considers that a prescriptive right had been obtained.

It is no longer necessary, however, to rely on the professional opinion of a physician and the expert opinion of the supervisor that Elliott's story of the November 1st accident was wholly untrue. The Industrial Commission of Virginia, whose decision, as that of an adjudicating body, may be noticed by the Court, has now held that "the accident did not occur."**** It follows that the $75. which he said was lost in the "accident" was in fact stolen by him. This was adequate to terminate the employee relation and thereby bar any order of reinstatement (*N. L. R. B.* v. *Federal Bearings*

---

* R. 128-129, 394-395, 416-417.

** R. 413-416, and Respondent's Exhibits 27, R. 881 [introduced at R. 414] and 28, R. 882 [introduced at R. 414].

*** So stated in the contemporary medical report (Respondent's Exhibit 35, R. 883).

**** Decision (reprinted in the Appendix hereto) dated December 22, 1938 (Claim No. 427557, Robert E. Elliott, Claimant, v. Virginia Electric and Power Company, Employer). The claim was for compensation for time lost because of the accident. Elliott testified in person before the Commission in support of his claim.

Co., 1940, CCA 2, 109 F. (2d) 945; *N. L. R. B.* v. *Fansteel Metallurgical Corp.*, 1939, 306 U. S. 240, 253-258).*

2. Electric Department

The two men that the Board finds to have been discriminatorily discharged are Staunton and Harrell.

(a) Staunton

There is no claim by Staunton (R. 172-173, 180) or even by the Board (Decision, R. 970-971) that Staunton was discharged for any reason except his failure to join the Independent before the expiration of the 90 days provided for in the Independent agreement. At the most, therefore, this was not a discriminatory discharge but, for the same reasons already mentioned in the case of Elliott, a lawful and valid discharge under Section 8 (3). The Board's order of reinstatement must therefore be set aside.

In fact, however, the record shows that Staunton was not discharged at all, for any reason, but voluntarily chose to leave. He saw the October 28th bulletin (Respondent's Exhibit 9, R. 861), quoting the closed shop clause and specifying the final date of November 3d (R. 176-177). One of the leaders of the Independent asked Staunton to join and even the IBEW officers (of which he was a member) asked him to do so (R. 175-176). His own testimony was that he had a perfectly free choice to join and work or not to join and stop work and he voluntarily chose the latter.**

---

* As the Court said in that case (p. 258):

> ". . . to provide for the reinstatement or reemployment of employees guilty of the acts which the Board finds to have been committed in this instance would not only not effectuate any policy of the Act but would directly tend to make abortive its plan for peaceable procedure."

** R. 176-177, 535-537, 552-553; Respondent's Exhibit 25-G, R. 880 [introduced at R. 367].

The Board, on its theory that the Independent was employer dominated, lays all this aside on the view that requirement of Independent membership was an illegal condition to continued employment and thereby in effect a discriminatory discharge (Decision, R. 970-971). We should remember, however, the realities of Staunton's choice. The closed shop clause did not prevent Staunton from continuing his membership in IBEW or from joining any other unions that he might desire.* Thus the requirement involved only the payment of dues, amounting to $3.00 a year (Board Exhibit 26, R. 843 [introduced at R. 173]). Even if this condition was "illegal," nevertheless it was not substantial.

Nor was it the real motive for Staunton's departure. Immediately after leaving the company he refused a job on transmission line construction in Norfolk at wages 50% higher than he was making with the company because he "wanted to leave Norfolk" (R. 177-178). He was not a Norfolk man and he was planning to marry a Norfolk matron as soon as she should procure a Reno divorce (R. 539-542). So there was no discharge in the sense of action taken against the will of the employee, but his departure was a matter of his own choice.

(b) Harrell

The evidence as a whole does not permit "conflicting inferences," as the Board's brief urges (p. 58). On the contrary, if anything can possibly be made clear by a protracted hearing it is that Harrell was, and progressively more and more became, an unsatisfactory employee. If the company is to continue its efforts for efficient operation, it must have

---

* "Nothing contained in this agreement shall prevent or in any wise affect the right of any employee to join or remain a member of any other labor organization" (Board Exhibit 9, R. 826 [introduced at R. 48, 53]; and see R. 176-177).

the power to select unsatisfactory employees to be laid off when a reduction in force becomes necessary.

The context of this discharge is minimized by the Board. First, as to the general policy, an extraordinary volume of new rural construction had just come to an end*, and a general reduction in force was necessary. For the whole electric department, there was a reduction in force of 85 men between November, 1937, and April, 1938; of these between 50 and 60 were laid off on March 31st (R. 461-462); of these 13 were in Norfolk; of these only 2 were members of the IBEW (R. 473-474); both of these were complained about; as to one of them the complaint was dismissed. Harrell, therefore, is the only one of the 85 who is now said to have been laid off because of union activities**. There remained between 35 and 40 (R. 171-172) members of his union, the IBEW. These include Creekmore, the president of the IBEW, Morris*** its vice president, and White, its recording secretary (R. 244-245); Judge, its financial secretary (R. 187, 244-245) was promoted by the company (R. 191-192) and then laid off among the 13 for reasons, as the Board has found (Decision, R. 975), unrelated to his union activities.

It is fantastic, therefore, to assert that Harrell was singled out for punishment. Indeed it is fantastic to say that any one would be selected for lay-off because of union activities in the circumstances then existing: the Regional

---

* Thus capital expenditures for new construction in the Norfolk division averaged $365,000 a year in 1936-37, but the program for 1938 was less than $75,000 (R. 364-365; and see R. 572-573).

** As shown above, there is no claim that the discharge of Staunton had any connection with union activities by him.

*** Morris was the only one of these three officers who took the stand. He testified that he was never discriminated against because of his membership (R. 700). Harrell's claim that May spoke to him disparagingly of unions (Decision, R. 973) was denied by May (R. 518).

Director of the Board had just two weeks earlier resumed active investigation of the company in regard to the three charges in this proceeding;* had there been any such disposition on the part of the company that was hardly an opportune time for its display.

But in fact the record is quite clear that the selection of the men to be laid off was governed by the customary standards of ability or value (including ability to get along with other men), seniority and dependents, of which the first was deemed the most important.** The officers selecting the men to be laid off testified without reservation that union activities or affiliations of the employees were not taken into consideration in any way.*** The reason for the selection of Harrell was his continuous embroilment in altercations with his employees and supervisors. He had been resentful and impertinent to his foremen, calling one or more of them a liar, and had provoked continual dissatisfaction among his associates; he was generally known to be surly and ill-tempered and difficult to get along with. Repeated complaints about his conduct had been received and he had already been warned. In addition he was not improving in his work and a number of the junior men were further advanced. He was, therefore, an obvious choice for the lay-off.****

The grievance committee of the Independent later investigated the selections of all the 13 men in Norfolk and came to the conclusion that they were entirely fair and nondis-

---

* R. 712-713.

** R. 307-309, 364-366, 368, 382-383, 520-523, 526-527, 538-539, 542-549, 557-561, 567-568. These references include the testimony of May, Crafton and Holik, being all of the group of Norfolk supervisors who made the selection.

*** R. 366, 367, 517-519, 532, 548-549, 551-553, 556, 557.

**** R. 209-211, 219-223, 473, 478-480, 482-484, 485-489, 489-492, 519-520, 523-524, 526-529, 530-534, 557-561, 567.

criminatory, indeed that it would have been discriminatory to lay off any one else in their stead (R. 206-208, 667-668). No one has since been employed to take the place of any of the 13 men discharged (R. 268).

The record does not indicate that Harrell's continual difficulties with his associates were due principally to his strong preference for the IBEW as the Board asserts (Decision, R. 974; Brief p. 57); on the contrary the record overwhelmingly shows that Harrell's difficulties and unpopularity were due to his inordinate opposition to everything relating to his daily task. Flagrant discord of this sort must be ended regardless of the reasons for Harrell's feeling, nor could the operating staff sit in formal session to investigate all circumstances of every complaint made to them by their subordinate officers, as the Board seems to wish (Brief p. 57); no business could proceed on such a basis. Moreover, it is quite misleading for the Board to say that Harrell had "more seniority than five of the eight third class linemen whom the Respondent kept" (Decision, R. 974; Brief p. 54). There was no seniority among those men, for they were all made third class linemen on the same day (R. 365-366). As for initial employment, Harrell was employed less than 5 months before the youngest third class lineman and there were special reasons of experience, service, competence and promise for preferring each of those five men, which were plainly put in evidence without any effort at contradiction (R. 542-549). All these facts the Board ignores without reference.

Harrell's bearing is very well illustrated by the history of foreman Tomlinson, who is quoted by the Board (Brief, note 41, p. 54) as asking to have Harrell in his gang "because he was a good worker" whom he "would like to have as a regular man in his gang" (R. 478). Tomlinson did say that, after having Harrell in his gang "for one week" (R.

478). Harrell, being (contrary to the claim in the Board's Brief, p. 57) transferred frequently from gang to gang (R. 519), was latter returned to Tomlinson. Soon, however, he negligently left some tools in the way of a truck; when reprimanded by Tomlinson for causing the loss of the tools, Harrell "jumped on the truck driver and started cussing him out" and Tomlinson had to intervene to prevent a fight (R. 478-9). After this Harrell left the gang but was sent back in the following month. On this visit Tomlinson had at least three difficulties with Harrell: first he had to reprimand Harrell for "loud cussing going down Church Street" (R. 479). Next, he had to admonish Harrell about his disposition:

> "I told him, 'I know you are hot-headed and Mr. May knows you are hot-headed and everybody else at the plant knows that you are hot-headed.' I said, 'If you try to get out of this habit you can get along fine in this gang'." (R. 479)

Finally Tomlinson had to tell Harrell four times to push up a pole; thereupon Harrell threatened to fight him. In the course of the ensuing interview Harrell referred to the very statement of Tomlinson quoted in the Board's brief, namely, that Harrell "was a good worker"; when Tomlinson admitted that he had said that, Harrell replied "You told a damned lie" (R. 380).

So the foreman quoted by the Board as an authority for Harrell's qualifications had progressively more and more difficulty with him until at last that foreman was threatened with a fight for ordinary orders in the course of duty and called a liar for complimenting him. This is not a basis on which business can proceed. Similar instances could be added: foreman Fowler, also cited as an authority in the Board's brief (p. 57), disclosed a report that Harrell's accident was due to "damned carelessness" on his part (R. 473):

foreman Tweedy, the only other authority cited by the Board (Brief, p. 57) had a "run-in" with Harrell because of his refusal to work (R. 210-11 and 482-484).

There is no reasonable basis for any assertion (Board's Brief, p. 56) that the testimony in regard to Harrell is "rather general." On the contrary each of the three supervisors who participated in selecting the men to be laid off testified in detail as to the reasons for selection of each of the 13 men laid off and the reasons for not selecting other men who had approximately similar seniority or positions. As to Harrell, the conclusions of these supervisory officials were reinforced by a large body of specific histories of individual altercations (see footnote p. 84 above). It is not admissible to say (Board's Brief, p. 58) that one of these supervisors, Crafton, admitted that Harrell's attitude did not have "anything to do" with his layoff; the meaning of the witness was clear that Harrell would not have been discharged for his unruliness if a reduction in force had not been necessary (R. 551), but when reduction became necessary, Harrell was selected because "he had had frequent run-ins with his foreman and fellow employees" and was not as far advanced in the line work as others (R. 453).

So the court below was clearly right in holding that:

> ". . . any conclusion that the union affiliation of [Harrell] had any connection with his discharge is purely speculation, unsupported by anything in the evidence . . . Harrell was shown to be a hot-headed quarrelsome man who had given considerable trouble . . . We can find no evidence that his union affiliation or activities had anything to do with the matter. He was not prominent in the union and there was no reason for the company to desire to be rid of him because of his union affiliation. It continued to employ other union men high in the councils of the union, and the idea that he was discharged because of union affiliation is nothing more than suspicion" (R. 1017).

3. Conclusion

There is no need to cite authority for the settled rule that a reinstatement order to be valid must be supported by substantial evidence and not merely by suspicion. The following recent statement by the Circuit Court of Appeals for the Fifth Circuit is, however, so apt an epitome of that rule as applied to the specific point discussed in this section that quotation may be appropriate:

> "The evidence to justify them [reinstatement orders] ought therefore to be substantial, and surmise or suspicion, even though reasonable, is not enough. The duty to weigh and test the evidence is of course on the Board. This court may not overrule a fact conclusion supported by substantial evidence, even though we deem it incorrect under all the evidence. Only when the evidence is such that in a jury trial it would be insufficient to support a like verdict may the judges interfere. *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 59 S. Ct. 501, 83 L. Ed. 660; *Appalachian Electric Power Co.* v. *National Labor Relations Board*, 4 Cir., 93 F. 2d 985. So far as the National Labor Relations Act, 29 U. S. C. A. §151 et seq., goes, the employer may discharge, or refuse to reemploy for any reason, just or unjust, except discrimination because of union activities and relationships. In the matters now concerning us, the controlling and ultimate fact question is the true reason which governed the very person who discharged or refused to reemploy in each instance. There is no doubt that each employee here making complaint was discharged, or if laid off was not reemployed, and that he was at the time a member of the union. In each case such membership may have been the cause, for the union was not welcomed by the persons having authority to discharge and employ. If no other reason is apparent, union membership may logically be inferred. Even though the discharger disavows it under oath,

> if he can assign no other credible motive or cause, he need not be believed. But it remains true that the discharger knows the real cause of discharge, it is a fact to which he may swear. *If he says it was not union membership or activity, but something else which in fact existed as a ground, his oath can not be disregarded because of suspicion that he may be lying.* There must be impeachment of him, or substantial contradiction, or if circumstances raise doubts, they must be inconsistent with the positive sworn evidence on the exact point. This was squarely ruled as to a jury in *Pennsylvania R. R. Co.* v. *Chamberlain,* 288 U. S. 333, 53 S. Ct. 391, 77 L. Ed. 819, and the ruling is applicable to the Board as fact-finder. That the witness was or is an employee of the party in whose behalf he testifies, is not in itself a reason to discard his oath, appears from the cited case, and was extensively demonstrated in *Chesapeake & Ohio R. Co.* v. *Martin,* 283 U. S. 209, 51 S. Ct. 453, 75 L. Ed. 983" (*N. L. R. B.* v. *Tex-O-Kan F. Mills Co.,* 1941, CCA 5, 122 F. (2d) 433, 438). (Italics added)

The Board's order as to Mann and Harrell plainly rests on no more than mere suspicion and should therefore be set aside under the above rule. The reinstatement order as to Elliott and Staunton is invalid if the Independent agreement was lawful, and in any case such order is barred as to Elliott by his unlawful conduct and as to Staunton by the voluntary nature of his choice to leave Norfolk. The reinstatement order should therefore be set aside in its entirety.

C.
THE FORM OF THE ORDER

If the Court should believe that any part of the Board's order was permissible, then in any case certain modifications of the order should be required on the ground that the unmodified form exceeds the power of the Board. The

first of such modifications is called for only if the Court should conclude that the finding of interference in violation of Section 8 (1) was permissible but not the finding of domination under Section 8 (2); the other modifications seem requisite unconditionally.

1. The Disestablishment Requirement

If the Court should conclude that the Board's finding of domination and interference with the organization of the Independent in violation of Section 8 (2) was not supported by evidence or justified by the statute, but that the Board's finding of anti-union expressions by Bishop and Edwards was permissible, these circumstances, it is respectfully submitted, will justify no more than a cease and desist order against future interference with rights under Section 7. Specifically, an order disestablishing the Independent would not be justified. This point was well expressed in *Humble Oil and Refining Co.* v. *N. L. R. B.*, 1940, CCA 5, 113 F. (2d) 85, 92:

> "It would be strange indeed if a labor organization, freely organized by a large majority of the employees, is to be destroyed whenever some well-wishing supervisor, contrary to his own duty and orders, says something in its favor. As we see it, the employees who freely formed these organizations have the right under the law to have them function. If the employer trespasses through his representatives, he and they ought to be stopped, but a more serious and demoralizing trespass than here appears is necessary to show such domination or interference or support as will justify annihilation of such organizations."

Consistently with that ruling a cease and desist orde. or a reinstatement order was sustained, but a disestablishment order set aside, in *N. L. R. B.* v. *A. S. Abell Co.*, 1938,

CCA 4, 97 F. (2d) 951, and *N. L. R. B.* v. *Arma Corporation,* 1941, CCA 2, 122 F. (2d) 153, 157.

2. Reimbursement of Checked-Off Dues

Paragraph 2 (e) of the Board's order requires the company to reimburse all members of the Independent for all dues deducted by the company and paid over by it to the Independent (R. 990). It is submitted that this provision of the order is beyond the power of the Board in the circumstances here presented. The five Circuit Courts of Appeals that have passed upon such a question have unanimously refused to enforce such a requirement.*

It is settled that the Board's power to require "such affirmative action . . . as will effectuate the policies of this Act" (Section 10 (c)) "does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices, even though the Board be of the opinion that the policies of the Act might be effectuated by such an order." (*Consolidated Edison Co.* v. *N. L. R. B.,* 1938, 305 U. S. 197, 235-6). The grant of power is not "to devise punitive measures, and thus to prescribe penalties or fines which the Board may think would effectuate the policies of the Act" but only "to achieve the remedial objectives which the Act sets forth" (*Republic Steel Corporation* v. *N. L. R. B.,* 1940, 311 U. S. 7, 11-12). These "remedial objectives," so far as back pay is concerned, are at most "to make the employees whole" (id., 311 U. S. at 12).

Looking then to the remedial end of making employees whole for losses sustained, it by no means follows, as Judge

* To the cases collected in the Board's brief, note 32, page 43, should be added *Corning Glass Works* v. *N. L. R. B.,* 1941, CCA 2, 118 F. (2d) 625.

Learned Hand pointed out for the Circuit Court of Appeals for the Second Circuit,* that mere conduct by an employer disqualifying a union as a collective bargaining agent inflicts "pecuniary damage upon each member of that union." On the contrary, all payments in question were fixed by the Independent and paid directly to it and used solely by it and, in Judge Hand's words, "it was by no means valueless to them." Indeed evidence here makes it plain that the Independent has been of important and conspicuous value to its members continuously since its organization. Where a union has been of value to its members, restoration of all dues necessarily goes further than making them whole and thus becomes punitive in nature.

If there be cases in which the record leaves it reasonably disputable whether the conduct and management of a union has been such as to confer value on its members, a question which in such circumstances might call for the administrative judgment of the Board, certainly that is not the situation here.

Throughout the whole proceeding there has been no finding by the Board nor any claim by the Board or its counsel** that the company since the organization of the Independent has in any way, directly or indirectly, given any aid or sup-

---

* *Western Union Telegraph Co.* v. *N. L. R. B.*, 1940, 113 F. (2) 992, 997. The court further said "the act did not create a mass tort by which . . . the Board . . . could dispense with proof that the 'unfair labor practice' actually impinged upon the putative victims and caused them pecuniary damage." Both arguments were followed by Judge Allen for a majority of the Circuit Court of Appeals for the Sixth Circuit in *N. L. R. B.* v. *West Kentucky Coal Co.*, 1940, 116 F. (2) 816, 822-823.

** Except the isolated claim of the Board, irrelevant for this immediate question, that the first payment to the Independent was premature (*i.e.*, before its full amount had been actually deducted from wages) and thus an aid by the company (R. 967) and the claim of Board counsel, not made by the Board and irrelevant for this immediate question, that the closed shop and check-off clauses were an aid by the company (Brief, pp. 26, 38-39).

port to the Independent or dominated, interfered with, or influenced it in any way. The maximum assertion, whether by finding or in argument, has been that indications of employer preference influenced employee choice in favor of the Independent in the period immediately preceding its organization. By tacit admission therefore the Independent, since the time of its organization, has continuously acted with a single eye to the interests of the men. In such a situation the union has not been a mask through which the employer has perpetrated its own designs and used the employees' money for his own ends, nor is there any such possibility in the case at bar. As a matter of law therefore a reimbursement order is not remedial but punitive and thus beyond the Board's power.

The Board has receded from its initial view that a reimbursement provision is mechanically called for in each case (Board's Brief, Note 36, page 47), and the requirement is now sought to be justified only in particular circumstances (Board's Brief, page 44), chiefly where a closed shop clause exists (Board's Brief, pages 44 and 47). But the closed shop clause here was not an invention of the company foisted upon receptive agents to close the net around them; the uncontradicted evidence shows that it was a proposal of the Independent, vigorously resisted by the company, granted only as an extreme concession and still opposed by the company executives*. Clearly, therefore, in this case the employees have imposed that requirement upon the company, rather than the company's imposing it upon the men. The company should not be penalized because it negotiated in a spirit of fair concession rather than intransigence (*Kansas City Power & Light Co.* v. *N. L. R. B.*, 1940, CCA 8, 111 F. (2d) 340, 348). The company is no more at fault under the Act than if the employees had paid their

* R. 264-265, 299-300, 324-325, 358-359, 460-461.

dues directly to the Independent (*N. L. R. B.* v. *J. Greenebaum Tanning Co.*, 1940, CCA 7, 110 F. (2d) 984, 988, cert. den. 1940, 311 U. S. 662).

It is not true, as the Board argues (Brief, page 48), that the closed shop clause and the check-off clause removed "the only means remaining to employees who wished to resist the Company's illegal practices, namely, a refusal to pay dues". The agreement with the Independent specifically reserved full privilege on the part of each employee "to join or remain a member of any other labor organization."* An election or certification of bargaining representatives could have been requested at any time.

Should the Court conclude that the Board's finding of domination was permissible, then an order of disestablishment will fully achieve all purposes of the Act and wholly sweep away the Independent, its organization and its agreement. If any remedy is justified, which the company respectfully submits there is not, then this remedy fulfills all remedial purposes of the Act. A further requirement for dues reimbursement does not effectuate the remedial purposes of the Act, but penalizes the company for yielding to the insistence of its employees.

The dues reimbursement provision is, therefore, beyond the power of the Board in the circumstances here presented.

3. Notice of Privilege to Organize or Join a New Unaffiliated Union

Paragraph 2 (f) of the Board's order requires the posting of notices to the effect that employees are free to become or remain members of any one of the three labor organizations upon whose complaint this proceeding was instituted and that the company will not discriminate be-

---

* Board's Exhibit 9, R. 826 [introduced at R. 48, 53]; and see R. 176-177.

cause of such membership (R. 990). The company submits that there should be included in this paragraph a provision that the employees are free to organize or join a new independent union.

The notice required by the Board's present order might well be interpreted by the employees as meaning that the formation of an independent union is outlawed, or at least is a foolhardy undertaking. This surely is not the purpose of the Act. The Act requires that the employee's choice be completely free, but it does not require a nationally affiliated labor organization, (Sections 1 and 2 (5)). It does not look with disfavor on independent unions which are truly independent. Unless the order corrects the impression it gives the employee that he can not join a new independent, his choice can not be termed completely free.*

The contention of the company here has the support of the Circuit Courts of Appeals for the Second,** Third,*** and Eighth**** Circuits. The basis for these decisions is admirably stated in *Westinghouse Electric & Mfg. Co.* v. *N. L. R. B.*, 1940, CCA 2, 112 F. (2d) 657, 661 (aff. *per curiam*, 1941, 312 U. S. 660):

"To post notices that the 'Independent' has been 'dis-

---

* See *Cudahy Packing Co.* v. *N. L. R. B.*, 1939, CCA 8, 102 F. (2d) 745, 753 cert. den. 1939, 308 U. S. 565.

** *Westinghouse Electric & Mfg. Co.* v. *N. L. R. B.*, 1940, 112 F. (2d) 657, *affirmed per cur.*, 1941, 312 U. S. 660.

*** *N. L. R. B.* v. *Blossom Products Corp.*, 1941, 121 F. (2d) 260; *Roebling Employees Ass'n, Inc.* v. *N. L. R. B.*, 1941, 120 F. (2d) 289.

**** *Hamilton Brown Shoe Co.* v. *N. L. R. B.*, 1939, 104 F. (2d) 49; *Cudahy Packing Co.* v. *N. L. R. B.*, 1939, 102 F. (2d) 745, cert. den., 1939, 308 U. S. 565. The only recent case in which the request for such a modification seems to have been denied is *N. L. R. B.* v. *Moore-Lowry Flour Mills Co.*, 1941, CCA 10, 122 F. (2d) 419, 429, but the request seems to have been made only on application to modify a decree already ordered enforced and the scope of the request is far from clear.

established,' and to say nothing more, may well lead the employees to conclude that any unaffiliated union will fall under the same ban. The same reason which demands its 'disestablishment'—rigid impartiality between all kinds of organizations—demands public declaration that after it has been 'disestablished,' the field will be open for the employees' choice of any form they prefer. For this reason Article II(a) of the order will be modified by adding the following suffix: 'but the employees are free to organize any union they choose, whether or not it is affiliated with a national union'."

In the interests of fairness and clarity, the order of the Board should be amended here in a like manner.

4. Modifications Accepted by the Board

The Board in the court below requested that paragraph 2 (f) of the order be modified so as to require, instead of notices stating that the company "will cease and desist," notices stating that the company "will not engage in conduct from which it is ordered to cease and desist in paragraph (1)." The company now requests that this modification be made, if the order be enforced, since the latter wording is now the present practice of the Board, and the former is open to the objection that it requires the company to confess violation of the Act. See *N. L. R. B.* v. *Express Publishing Co.*, 1941, 312 U. S. 426, 438-439.

Moreover, as requested by the Board (Brief, Note 5, p. 7), the work relief provisions should be stricken out. *Republic Steel Corp.* v. *N. L. R. B.*, 1940, 311 U. S. 7.

CONCLUSION

It is respectfully submitted that the decree of the court below should be affirmed and that if any part of the decree be reversed in order to require enforcement of any part of the

Board's order, that order should at least be first modified in the manner hereinabove suggested.

Respectfully submitted,

T. JUSTIN MOORE
GEORGE D. GIBSON
Counsel for

VIRGINIA ELECTRIC & POWER COMPANY
Office and Post Office Address:
Electric Building,
Richmond, Virginia.

HUNTON, WILLIAMS, ANDERSON, GAY & MOORE
Of Counsel

Dated November 3, 1941.

APPENDIX

Opinion of Industrial Commission of Virginia

ROBERT E. ELLIOTT, CLAIMANT

v.

VIRGINIA ELECTRIC & POWER CO.,
EMPLOYER
self-insured.

CLAIM NO. 427557

December 22, 1938.

Claimant appeared in person.

MESSRS. ROMAN E. MILLER *and* W. E. KYLE, *Attorneys-at-Law*, Norfolk, Virginia, *for the Defendants.*

Hearing before Commissioner DEANS at Norfolk, Virginia, on December 15th, 1938.

DEANS, Commissioner, rendered the opinion.

Robert E. Elliott, Jr. filed an application with the Industrial Commission on October 19th, 1938, requesting a hearing alleging that he met with an accident on November 1st, 1937.

It is admitted that the claimant's average weekly wage would entitle him to the maximum weekly compensation should it be found to be compensable.

The claimant recites the fact that he had an accident but further did not produce any witnesses to same. The defendant showed by preponderance of evidence that the accident did not occur. The burden of proof is upon the

claimant to make his claim and as he has failed to do so, this claim is dismissed.

I, W. F. Bursey, Secretary, Industrial Commission of Virginia, hereby certify that the foregoing, according to the records of this office, is a true and correct copy of Opinion and Award in Claim, No. 427-557, *Robert R. Elliott, Jr., Claimant*, vs. *Virginia Electric and Power Co.*, self-insured.

I further certify that a Review as provided for in Section 60 of the Virginia Workmen's Compensation Act, was not requested.

Given under my hand and the seal of the Industrial Commission of Virginia, this the 15th day of May, 1939.

W. F. Bursey,
Secretary.

[Listed among claims denied at 20 Va. Indust. Com. 513.]

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. ~~750~~ 26

NATIONAL LABOR RELATIONS BOARD

vs.

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF VIRGINIA ELECTRIC AND POWER COMPANY.

BRIEF FOR THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF VIRGINIA ELECTRIC AND POWER COMPANY IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

PAUL E. HADLICK,
WM. EARLE WHITE,
Counsel for Respondent.

INDEX.

Subject Index.

	Page
Opinion below	1
Statement of facts	2
Argument	9
The alleged hostility of the company to unions is without significance	10
Circumstances in this case are without significance	13
Meetings of employees on company premises	15
Organization of the independent union	18
Use of bulletin boards and telephones	23
Solicitation on company premises	23
The period required to organize the independent union	25
Summary and conclusion	26

Cases Cited.

Consolidated Edison Co. v. *National Labor Relations Board*, 305 U. S. 197	14
National Labor Relations Board v. *Link Belt Company* (Nos. 235-236, decided Jan. 6, 1941, 61 S. C. 358)	10
Texas & N. O. R. Co. v. *Railway Clerks*, 281 U. S. 548	26

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 759

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF VIRGINIA ELECTRIC AND POWER COMPANY.

BRIEF FOR THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF VIRGINIA ELECTRIC AND POWER COMPANY IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

Opinion Below.

This case comes before the Court upon the petition of the Solicitor General, on behalf of the National Labor Relations Board for writs of certiorari to review two decrees of the United States Circuit Court of Appeals for the Fourth Circuit, entered on November 12, 1940, setting aside and refusing to enforce an order of the National Labor Relations Board issued against the Virginia Electric and Power Company on February 27, 1940. The

opinion of the Circuit Court of Appeals is reported in 115 F. (2d) 414, and is printed in Volume IV of the stipulated record, on pages 23 to 26. The decision and order of the National Labor Relations Board are reported in 20 N. L. R. B. No. 87, and are printed in Volume I of the stipulated record on pages 1 to 45. In this brief, references to the stipulated record will accord with the practice followed in the petition. Volumes I and II, which were printed as an appendix to the brief of Virginia Electric and Power Company, filed in the Circuit Court of Appeals, will be referred to as (P. A. I) and (P. A. II), respectively; Volume III which was printed as an appendix to the brief filed by the Board in the court below will be referred to as (B. A.), and Volume IV, containing the proceedings before the Circuit Court of Appeals, will be referred to as (Pro.). The typewritten transcript of evidence will be referred to as (Tr.).

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10(e) and (f) of the National Labor Relations Act.

Statement of Facts.

In January, 1922, the union representing the transportation employees of Virginia Railway and Power Company, a predecessor of Virginia Electric and Power Company, called a strike. The strike failed. The employees in no other department of the Company participated in the strike (P. A. I., 363-364).

From 1922 to 1937 no labor organization represented employees of Virginia Railway and Power Company or Virginia Electric and Power Company in their dealings with their employer. In 1934, and in March 1937, efforts were made by organizers to interest the employees in join-

ing unions, which were not successful, although the Company offered no opposition except to stipulate that there should be no solicitation on Company time or property (P. A. I. 123-124, 150, 151, 152, 237, 238-239).

On April 12, 1937, this Court sustained the constitutionality of the National Labor Relations Act. On April 26, 1937, the Company posted the following notice (P. A. I. 15-16):

> "To Employees of the Company:
>
> "As a result of recent national labor organization activities and the interpretation of the Wagner Labor Act by the Supreme Court, employees of companies such as ours may be approached in the near future by representatives of one or more such labor organizations to solicit their membership. Such campaigns are now being pressed in various industries and in different parts of the country and strikes and unrest have developed in many localities. For the last fifteen years this Company and its employees have enjoyed a happy relationship of mutual confidence and understanding with each other, and during this period there has not been any labor organization among our employees in any department, so far as the management is aware. Under these circumstances, we feel that our employees are entitled to know certain facts and have a statement as to the Company's attitude with reference to this matter.
>
> "The Company recognizes the right of every employee to join any union that he may wish to join, and such membership will not affect his position with the Company. On the other hand, we feel that it should be made equally clear to each employee that it is not at all necessary for him to join any labor organization, despite anything he may be told to the contrary. Certainly, there is no law which requires or is intended to compel you to pay dues to, or to join any organization.

"This Company has always dealt with its employees in full recognition of the right of every individual employee, or group of employees, to deal directly with the Company with respect to matters affecting their interests. If any of you, individually, or as a group, at any time, have any matter which you wish to discuss with us, any officer or department head will be glad, as they always have been, to meet with you and discuss them frankly and fully. It is our earnest desire to straighten out in a friendly manner, as we have done in the past, whatever questions you may have in mind. It is reasonable to believe that our interests are mutual and can best be promoted through confidence and cooperation.

(Signed J. G. HOLTZCLAW,
President."

Several groups in Richmond and Norfolk, within the next three weeks, presented petitions for increased wages and improved working conditions (P. A. I. 17, 56-58). The Company sought to further clarify its position, and had its supervisory officers instruct the employees to select delegates to attend a meeting where a high company official would address them. On the evening of May 24, 1937, two meetings were held, described in the decision and order of the Board as follows (P. A. I. 17-20):

"At Richmond, Holtzclaw, and at Norfolk, R. J. Throckmorton, vice-president of the respondent's Norfolk operations, delivered the following address:

"A substantial number of its employees representing various departments and various occupations have approached the Company with the request that the Company consider with them the matter of their working conditions and wages. In other words, they have requested collective bargaining. The Company's position with respect to this was recently stated in a posted bulletin.

"In a Company such as ours, if an individual operator for example should ask for himself better working conditions or wages, this Company could not comply with his request without also making the same concessions to other similar operators. In such a case the operator who appealed individually would, as a practical matter, be bargaining collectively for all of his group, which is not the logical procedure.

"This Company is willing to consider the requests mentioned above but feels that in fairness to all of its employees and to itself it should at the same time consider other groups who have not yet come to it. If the approaching negotiations are to be intelligent and fair to all properly concerned, they should be conducted in an orderly way and all interested groups should be represented in these discussions by representatives of their own choosing as provided in the Wagner National Labor Relations Act, which provides as follows:

" 'Section 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

"The Wagner Act applies only to employees whose work is in or directly affects interstate commerce and to companies engaged in interstate commerce. Counsel for this Company advise us that in their opinion the provisions of the Act do not apply to local transportation employees, to gas employees in Norfolk, or to certain strictly local employees of the light and power department. In spite of this, the Company wants to make it perfectly clear that its policy is one of willingness to bargain with its employees in any manner satisfactory to the majority of its employees and that no employee will be discriminated against because of any labor affiliations he desires to make.

"The petitions and representations already received indicate a desire on the part of these employees at least

to do their own bargaining, and we are taking this means of letting you know our willingness to proceed with such bargaining in an orderly manner. In order to progress, it would seem that the first step necessary to be taken by you is the formation of a bargaining agency and the selection of authorized representatives to conduct this bargaining in such an orderly manner.

"The Wagner Labor Act prohibits a company from 'dominating or interfering with the formation or administration of any labor organization or contributing financial or other support to it'.

"In view of your requests to bargain directly with the Company and in view of your right to self-organization as provided in the law, it will facilitate negotiations if you will proceed to set up your organization, select your own officers and advisors*, adopt your own by-laws and rules, and select your representatives to meet with the company officials whenever you desire.

"Holtzclaw added, at the conclusion of the quoted speech, that any wage increase granted by the respondent would become effective as of June 1, 1937; Throckmorton did not. As to all other material incidents the two meetings were substantially identical. Employees asking whether they had to join a labor organization and what kind of organization they should form were told they need join none and were refused advice as to the type of organization they should adopt. At the close of the respondent's direct participation in the meetings, the delegates were told they might, if they wished, remain and discuss the matter further. At both meetings, a substantial number of the delegates remained, decided to report the speech to their fellow employees, and agreed to meet for further discussions on June 1."

Within the next two or three days the representatives, acting on their own initiative, reported to meetings of their respective groups the message delivered by the manage-

---

* Erroneously quoted as "supervisors" in the decision of the Board.

ment. These meetings were held on Company premises, and in some few instances during working hours, but in most instances the meetings were held at times when the men were not supposed to be on duty. (P. A. II. 722-723, 753, 811-812, 815, 820, 824, 833-834, 841-843, 917). In no case were supervisors present at these meetings. At most of these meetings the employees indicated their preference for an independent organization to represent them in dealing with the Company, and representatives were chosen by each group to act for them. (P. A. II. 659-668, 722-728, 796, 818-820, 841-842, 882-883, 893-894, 909-910.)

On June 1, 1937, meetings of these representatives met on company property, in Richmond, and in Norfolk, neither group knowing what the other was doing (P. A. II, 729-731, 779-780, 809-810, 844-845). At the Richmond meeting, a sub-committee was formed to ascertain what action employees in Norfolk were taking. This committee invited the Norfolk committee to meet with it in Petersburg. The meeting was held there on company premises on June 3rd (P. A. II, 797-800, 846-869; Bd. Ex. 19). At this meeting it was agreed to attempt a system-wide organization, and for that purpose to retain an attorney to draft a constitution. This was done on June 4th (P. A. II, 810-811, 868-871, 877-878).

During the ten days after the Petersburg meeting numerous meetings were held both in Richmond and in Norfolk for the purpose of hearing reports of the Petersburg meeting and the employment of counsel, and of considering the form of the draft constitution and by-laws when available. At least six of such meetings are shown by the record (P. A. I, 122-123, 440-441; P. A. II, 769, 771, 790, 791, 800-801, 814-815, 820-822, 846-847, 871-872, 900-902, 908). During the course of these meetings the draft constitution and by-laws were revised considerably (P. A. II, 810-811, 846-848), and a committee was appointed in Norfolk to meet with the Richmond representatives for changing and approving a

form of constitution, it being considered that a committee could function more efficiently than any large group.

On June 15th a joint meeting of the Norfolk and Richmond committees was held in the American Legion Hall, in Richmond, and the draft papers were read paragraph by paragraph and revised. As a result of protracted discussion, lasting over four hours, the committees approved the constitution and by-laws in their revised form together with a form of application for membership in the proposed organization. The next day the first two papers were mimeographed and the last printed (P. A. II, 848-851), Int. Exs. 36 and 37). These papers designated the name of the new association as "The Independent Organization of Employees", designated in the record as I. O. E.

The resulting constitution and by-laws were reported by the respective representatives to numerous groups of the men, for consideration, revision and ratification or rejection. Seven of these meetings are indicated by the record (P. A. II, 670-677, 715-716, 733-735, 781-783, 800-803, 888-889, 906-909, 1008-1010, 1043-1056). All of these meetings were called and conducted by the employees themselves and not on Company property. A majority in each meeting approved the papers.

Solicitation of membership in the I. O. E. began among the employees as soon as the membership cards were available, about June 18th. Generally, solicitors for the independent union did not solicit or sign membership cards on Company property or during working hours, but in some instances solicitation occurred in violation of the rule (P. A. I, 173-175, 204-209, 213-214; P. A. II, 676-679, 711-712, 731-733, 774-775, 824-825, 834-835, 903-904). On the other hand, A. F. of L. and C. I. O. organizers, and employees who were members of unions affiliated with those organizations, also discussed and solicited for those unions among the employees on Company property and during working hours

(P. A. I, 174-175, 194-196; P. A. II, 754-756, 775-776, 792-794, 803-804, 827-830, 896; Int. Ex. 21).

By July 12th, two thousand employees had signed applications for membership in the independent organization (P. A. II, 804, 821, 831-832, 878-879, 888-889). Transport Workers Union, a C. I. O. affiliate, had formed a local by this time, composed of transportation workers in Norfolk. International Brotherhood of Electrical Workers, an affiliate of A. F. of L., was active in soliciting members among electrical employees. Neither of these membership drives was very successful, as no substantial number of employees ever joined either of these unions. On July 17th, the independent group completed their organization, and formulated demands to be made of the Company (P. A. II, 684-686, 694-695, 741-745, 782, 804-805, 886-887; Int. Exs. 15-29), and on July 19th, these demands were presented and request for recognition was made. On July 30th, a meeting was held at which the Company recognized the Independent as exclusive bargaining agent of its employees upon being presented 2543 signed membership cards. Thereafter, in negotiations covering three days, a contract was agreed upon by the committees, which was later ratified by the employees and by the Company. This agreement was executed August 5, 1937 (P. A. II, 923-943; Bd. Ex. 9).

ARGUMENT.

While three questions are presented by the petition for writs of certiorari, only the first will be considered in this brief. That question is whether the National Labor Relations Board could validly find that Virginia Electric and Power Company violated Section 8 (2) and (1) with respect to the Independent Organization of Employees of Virginia Electric and Power Company on the basis of the message of the management to employees of the Company, delivered May 24, 1937.

The Board found (P. A. I, 21) "that at the May 24th meetings the respondent urged its employees to organize and to do so independently of 'outside' assistance, and that it thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

The Circuit Court of Appeals held that there was no substantial evidence to support this finding of the Board (Pro. 31). It is contended that this decision is inconsistent with the principles laid down by this Court in the case of *National Labor Relations Board* v. *Link Belt Company* (No. 235-236, decided January 6, 1941; 61 S. C. 358), holding that an employer's known attitude toward unions is relevant in determining whether the employer dominated or interfered with an organization of its employees. It is argued that while the court below found that Virginia Electric and Power Company had been hostile to outside unions and that employees knew of this hostility, nevertheless, the court did not permit the Board to accord any weight to this circumstance in drawing its conclusions that the message of May 24, 1937, coerced its employees into forming an "inside union".

The Alleged Hostility of the Company to Unions is Without Significance.

The court below found that the Company had been opposed to the organization of its employees by an outside union prior to the passage of the National Labor Relations Act (Pro. 25). In the absence of any evidence that this past attitude had any effect on the action taken by the employees in forming the Independent union in this case, the relevancy of the past attitude of the employer is not established.

Certainly the decision of the Circuit Court of Appeals in this case is not inconsistent with the principles laid down by this Court in the *Link Belt* case. In the *Link Belt* case,

the Court found a condition created by the employer dissimilar in almost every respect from the present case.

In that case the Company had maintained for many years a company union which it continued to recognize until the so-called independent was formed. In this case there had never been a company union among employees of Virginia Electric and Power Company.

In the *Link Belt* case employees were discharged as late as 1936 for attempting to organize a labor union among employees. In this case, while it is now argued (Petition pp. 13-14) that the discharge of Everhard M. Mann, on June 1, 1937, was an act of the Company calculated to cause employees to join the independent, it is pertinent to observe that nowhere in the decision of the Board is any such charge made.

In the *Link Belt* case, supervisory employees actively solicited for the independent union on company time and company property. In this case, no case of supervisory solicitation is claimed to have occurred. As a matter of fact, the Company, on May 20th, and again on May 25th, 1937, gave careful instructions to all who held supervisory positions not to interfere, assist or attempt to advise or influence employees, in any way, regarding any choice or activity of organization (P. A. II. 305-307). In the *Link Belt* case, such instructions were issued only after the independent union had been organized, and had secured a majority in the plant.

The circumstances which this Court regarded as significant are summed up in the following quotation from the opinion (*National Labor Relations Board* v. *Link Belt Co.*, 312 U. S. —; 61 S. C. 358, at p. 365):—

> "The Board had the right to believe that the maintenance of the company union down to the date when Independent's membership drive was completed was not a mere coincidence. The circumstantial evidence

> makes credible the finding that complete freedom of choice on the part of the employees was effectively forestalled by maintenance of the company union by the employer until its abandonment would coincide with the recognition of Independent. The declared hostility towards an 'outside' union, the long practise of industrial espionage, the quick recognition of Independent, the support given Independent's membership drive by some of the supervisory staff, the prominence of company union representatives in that drive, the failure of the employer to wipe the slate clean and announce that the employees had a free choice, the belated instructions to the supervisory staff not to interfere—all corroborate the conclusion that the employer facilitated and aided the substitution of the union which it preferred for its old company union."

The hostility of employers to unions, openly expressed and implemented by the continued maintenance of a company union, the active interference of supervisory employees in the formation of a successor to the company union, and other acts taken at the time the employees were making a choice of their collective bargaining representative, is a relevant fact to be considered in determining employer domination, but mere opposition to unions before the passage of the National Labor Relations Act should not be considered such a relevant fact. Evidence of continued opposition after the Act, calculated to restrict the employees' freedom of choice, should be required. It is not the hostility but the effect upon employee freedom that is in issue.

In an attempt to bolster up this argument, the petition refers to certain actions of E. L. Bishop, Superintendent of Railway and Bus operators in Norfolk (Petition, p. 15). This leads to a consideration of another important distinction between the facts in the present case and those under consideration in the *Link Belt* case. In the *Link Belt* case, all employees worked in one plant; in the present case, em-

ployees are widely separated in different cities of Virginia and North Carolina. There is no evidence and there is no reasonable basis for an inference that Bishop's actions in the Norfolk Transportation Department, in Norfolk, could have had any effect on transportation employees of the Company in Richmond or in Petersburg. Bishop's department was only one of nine transportation departments of the Company (P. A. I. 473). Still less basis is there for an inference that it had any effect on employees in the Gas or Electric or Clerical Departments of the Company. The same thing is true as to the effect, if any, of the conduct of W. W. Edwards, who was a supervisor under Superintendent Bishop in the Norfolk Transportation Department. As a matter of fact, the employees in the Norfolk Transportation Department were the last to join The Independent Organization of Employees of Virginia Electric and Power Company, and, as was observed by the Circuit Court of Appeals in its opinion, the activity of Bishop "impeded rather than helped the organization of the association" (Pro. 33).

Circumstances in This Case Are Without Significance.

All the circumstances referred to by the Board in its decision and order were considered by the Circuit Court of Appeals, which came to the conclusion (Pro. 34):

> "There is nothing in any of these circumstances, or in all of them taken together, sufficient to support a finding that the company was giving aid or assistance to the association, or was interfering in any way with the organization of its employees or their free exercise of choice in the selection of bargaining representatives. It is only as they tend to establish such interference that such circumstances have any significance. In many cases, of course, they are very significant; but when the limited use of company property and facilities here shown is judged in the light of the record, we do

not think that it constitutes any substantial evidence upon which a finding of interference or domination could be predicated."

The court below was applying to the findings of the Board in this case the test of whether they were supported by substantial evidence, as that term was defined by this Court in the case of *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, p. 229, where it was said:

> "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

While it is realized that in a brief such as this no complete argument on the merits of the case is in order, nevertheless, it is felt that in order to properly pass upon the petition for writs of certiorari, the Court should be presented a fair picture of what took place between May 24th and August 5th, 1937, so far as these facts relate to the organization of the independent union. The circumstances relied upon in the petition should be placed in proper perspective to avoid the distorted picture painted there.

The Board lists the following facts which it regards as constituting unfair labor practices (P. A. I, 25):

> (1) Meetings of committees of employees were held on Company premises for the purpose of forming an independent system-wide organization.
>
> (2) Bulletin boards of the Company were used for posting notices of these meetings.
>
> (3) Telephone connections of the Company were used by committeemen to communicate with each other.
>
> (4) There was widespread solicitation by I. O. E. on Company premises.
>
> (5) The I. O. E. was completely organized and had a majority of the employees as members within six weeks after the meeting of May 24th.

The Meetings of Employees on Company Premises.

The Board finds that meetings of the employees were held upon the premises for the purpose of forming an independent system-wide organization. It is perfectly clear that meetings were held on Company premises. The meetings held prior to June 1, 1937, were, without exception, meetings called for the purpose of hearing reports of representatives who attended the meeting of May 24th. At these meetings, so far as the evidence shows, when any action was taken at all, it was taken to ascertain by various means what the employees in the group wanted to do. At Cove Street, in Norfolk, there was a secret ballot (P. A. II, 660). At the Service Building, in Richmond, apparently the men voted openly (P. A. II, 842). At Reeves Avenue, the generating plant, in Norfolk, the vote was open (P. A. II, 820). At Twelfth Street, the generating plant in Richmond, the ballot was not even taken on Company premises, but was a secret ballot collected at the homes of the employees (P. A. II, 883). The Gas Department and the shops are covered under the stipulation that the meetings there were similar to the meetings held at Cove Street (P. A. II, 908). All of these meetings had one thing in common—the employees everywhere voted their choice in favor of an independent organization as against C. I. O., A. F. of L., and no organization. They were given their choice, so far as the evidence discloses, without any suggestion, interference, or supervision from the Company.

It is obvious that these meetings were not held "for the purpose of forming a system-wide independent organization". The Transportation employees in Norfolk voted to form the "Employees Association of Committees", under the leadership of Elliott (P. A. II, 902), and the Transportation employees in Richmond voted to form their

own organization, and immediately rented their own quarters, and never held any further meetings on Company premises (P. A. II, 909-910).

There was no communication between employees in Norfolk and in Richmond until after June 1, 1937 (P. A. II, 809-810). All meetings up until that time were of groups of similarly employed men in a single division. Clearly no system-wide organization had been generally contemplated. On June 1st, there was a meeting in Richmond, called by Holzbach, of representatives of various Richmond groups, and this meeting was held on Company premises, but not during working hours. Here, for the first time, a system-wide organization was discussed, and a committee was appointed to find out what employees in Norfolk were doing, and to get a lawyer to draw up a tentative constitution for a system-wide independent organization. No form of organization was determined (P. A. II, 845).

On June 1, 1937, representatives of various groups met in Norfolk on Company premises, but not during working hours, and heard Elliott explain his proposed "Employees Association of Committees". The meeting took no action except to direct that the proposal be printed and distributed to the representatives. No action was taken looking to the formation of any organization (P. A. II, 729-731).

On June 3rd, a meeting of representatives from Norfolk and Richmond was held in Petersburg on Company premises, but not during working hours, at which nothing was agreed upon, except that a lawyer would be retained to draw up a constitution and by-laws. There was no definite idea of what sort of organization would be set up, or whether the groups would approve anything (P. A. II, 799, 869-870).

On June 7, 1937, representatives of different departments met in the Service Building, in Richmond, again at night, and discussed changes to the proposed constitution and by-

laws, submitted by the attorney (Int. Ex. No. 35; P. A. II, 846).

On June 9, 1937, a special meeting was called in the Company Y. M. C. A., at the car barns on 18th Street, in Norfolk, of bus and street car operators. The meeting was attended by Underwood, from Richmond, at Tatem's request, to try to persuade these men to join in the efforts to form a system-wide organization (P. A. II, 871, 901). The meeting, however, decided to adopt Elliott's E. A. C. plan, and form a separate organization of transportation workers (P. A. II, 902). Over a period of time, ending July 11th or 12th, applications were signed by 115 men, which was less than a majority of the group (Tr. 5132).

On June 11, 1937, a second meeting was held in Norfolk by representatives of various groups sponsoring the system-wide organization (Int. Ex. 6; Tr. 3721). The Norfolk transportation representatives still refused to participate. The proposed constitution was discussed (P. A. II, 800).

On June 14, 1937, a group met in Norfolk, consisting of operators at the Reeves Avenue Power Plant. The meeting was held in the auditorium at the power plant which was a room that the employees themselves had furnished. The group considered the proposed form of constitution and voted to oppose the provision for a check-off (Int. Ex. 31; P. A. II, 1034-1035).

Minutes of all these meetings are set forth in the stipulated record (P. A. II, 1001-1070).

It is stipulated that no meetings were held on Company property by employees or representatives attempting to form the independent union subsequent to June 14, 1937 (Tr. 5238).

The meetings beginning with June 1, 1937, were held at night, and there is no evidence that the Company had any knowledge of them.

The employees took action to find out what a majority of them wanted. Four choices were usually presented: C. I. O., A. F. of L., independent union, or no union. The very fact that these choices were presented indicates that the employees themselves felt that they were free to do as they chose. The fact that these meetings were held on Company premises must be shown to have some relation to the choice made by the employees of an independent union. Unless such a connection is established, the fact that the meetings were held on Company premises is totally irrelevant.

The Organization of the Independent Union.

The constitution, as originally prepared, was submitted to a joint meeting of committee members from Norfolk and Richmond, held at the American Legion Hall, in Richmond. After extensive modification, it was adopted by those present (Int. Ex. 22; P. A. II., 847, 1027-1033). This did not bind any employees to become members of the proposed organization. The men present merely agreed to take the constitution and by-laws as finally approved, and present them to their fellow-employees. The I. O. E. was a plan that employees could accept if they wanted it; otherwise, it would amount to nothing. The constitution was the work of the representatives of employees, embodying the principles that those men believed accorded with the desires of their constituents.

The I. O. E. could never have been organized, had it not been the almost unanimous desire of the employees. The Constitution of I. O. E. provides for a federation of four unions based on the kind of work in which employees are engaged. There are four divisions, the Transportation, the Electric, the Gas, and the Accounting, General Office and Sales. These divisions, in turn, are divided into voting sections according to the employees' particular type of em-

ployment. Employees in the Norfolk division of the Company are in separate voting sections from those in the Richmond division. The Gas Division, located in Norfolk, naturally has no Richmond voting sections.

There are a total of twenty-seven voting sections. Members of each voting section elect a representative to the appropriate Division Committee. Members of each Division Committee, in turn, elect two of their number to the General Committee of I. O. E., one member from Norfolk and one from Richmond, except in the case of the Gas Division which elects two members from Norfolk. In addition to this, all the Division Committee members in Richmond, acting as an Interdepartmental Committee, elect one member-at-large to the General Committee, and the same procedure is followed in Norfolk (Bd. Ex. 36; P. A. II., 950-968). Voting sections annually hold a primary by secret ballot to nominate candidates for election to Division Committees. Those receiving the largest and second largest number of nominating ballots are the candidates, and from these two the representatives of each voting section to the Division Committee is chosen by secret ballot.

This brief description is given to demonstrate how difficult it would be for the Company to dominate the administration of I. O. E., even should it wish to do so. Nomination by secret ballot is designed to bring out the men most desired by their fellow-employees. From the two most acceptable, the representative is chosen by secret ballot, with elaborate safeguards against any effort to control the election. The man the majority of the employees want for representative is bound to win. The right to recall a representative is provided, so in case an employee was dominated by the employer, he could be replaced.

The I. O. E. was accepted by the vast majority of the employees. The applications for membership were not generally distributed until June 21st (P. A. II., 850). On July

2nd, the primary elections were held to nominate candidates for representatives to the Division Committees. This was only seventeen days after the meeting at the American Legion Hall, and just two weeks after employees had their first opportunity to join I. O. E. The Board does not mention it in its decision, but it is in the record and not denied that 1912 employees voted in this primary election (Int. Ex. 25; Tr. 4372). There were approximately 2800 employees eligible for membership in the I. O. E. Within two weeks, I. O. E. had signed up more than two-thirds of the employees, and of these, 1912 actually participated in the selection of candidates by making out nomination ballots which required them to write in the name of the man they wanted to represent them. It is unreasonable to infer that a group of twenty-five or thirty men could persuade approximately 2000 fellow-employees, divided into small groups over most of eastern Virginia and northeastern North Carolina, to take the trouble to vote in an election unless those men were actively interested in the project. It is perhaps conceivable that a small group could impose an employee representation plan on a large but indifferent mass of employees where all that was required was the acquiescence of silence. Here active participation was required and positive approval was necessary.

With the election of representatives to the Division Committees, on July 12th, in which election 1885 members participated (Int. Ex. 26., Tr. 4372), the formation of I. O. E. was completed. Thereafter, the various committees met and completed their organization as provided in the constitution. I. O. E. was by this time the voluntary choice of approximately 2500 employees.

Five days after the election of representatives on July 12th, all of them met at Ocean View. Between July 12th and July 17th, these men had canvassed their respective voting sections to ascertain the wishes of the men as to de-

mands to be made upon the Company. At the meeting at Ocean View, which lasted two days, these demands were discussed, revised and formulated into a proposed contract. The minutes of the meeting are in the record (Int. Exs. 16 A-F; P. A. II., 1016-1024), as is the draft of proposed contract (Bd. Ex. 8; Tr. 76). Examination of this proposed contract shows much more than requests for an increase in pay. Overtime payments, a limit to the work week, seniority rules, vacations, improved working conditions, a check-off, a closed shop, arbitration of disputes according to an elaborate procedure, were requested along with wage increases, which, if granted, would have increased the company pay-roll by over a million dollars a year.

Thereafter, Underwood, who had been elected chairman of the General Committee of I. O. E., presented the proposal to Mr. Holtzclaw, President of the Company, with a letter requesting a conference and demanding recognition of I. O. E. (P. A. II., 919). Pursuant to this request, a meeting was arranged for July 30th, at which time the General Committee of I. O. E. met representatives of the management in Richmond.

It is conceded that I. O. E. brought to that meeting 2543 signed applications for membership, to which were attached separately executed pay assignments of the employees, directing the Company to deduct from their wages their dues to I. O. E. These cards were checked by the Company (P. A. II., 745). There is no contention that these membership cards were invalid, nor is any claim made that they were not signed voluntarily.

The contract, finally negotiated, appears in the record (Bd. Ex. 9, P. A. II., 923). Not only a substantial wage increase but seniority rights, overtime pay at time and a half, maximum hours, and arbitration of grievances, none of which had been ever before granted employees, were finally incorporated in the agreement. To infer that the

men who negotiated this contract for the employees felt that they were acting at the suggestion of the Company, or were laboring under the fear of reprisal if they incurred its displeasure, is ridiculous.

Even with this fairly successful outcome, the members of the Division Committees, who had to approve the contract before it could become effective, went back to their voting sections and ascertained the views of their members (P. A. II., 705, 835).

In the Transportation Department, in Norfolk, which was the last important group to join I. O. E., the representative of those men made them sign a written consent to accept the contract (P. A. II., 905). These consents were signed by 324 men, much more than a majority of that group.

After the contract was signed, the I. O. E. did not just drift along. It promptly organized Grievance Committees, and the record shows a large number of grievances handled (Int. Ex. 1; Resp. Ex. 8; Tr. 845, 3660). The Board, in its opinion, does not mention these, but perhaps it chose to disregard this evidence which showed the absence of Company domination.

These facts, uncontradicted and fully supported by the record, are related to show that no inference of Company domination or coercion is justified in the light of the action the employees took. The circumstance of initial meetings on Company premises, when considered in connection with what employees then did, and their actions thereafter, cannot be considered as sufficient to furnish the basis of an inference that these men felt that they were receiving any approval or encouragement from the Company. During the period from June 15th to July 12th, when the first elections were held, the employees all had the opportunity to freely consider their choice between the independent and the outside unions which were actively soliciting their support with no opposition or interference on the part of the Com-

pany. Witnesses were introduced by the Board who preferred the outside organizations. None testified to coercion, intimidation or interference on the part of the Company.

Use of Bulletin Boards and Telephones.

The Court in its opinion (Pro. 34) calls attention to the fact that only one instance of the use of a Company bulletin board is established, and that the case where Holzbach posted a notice of his meeting of May 26th (P. A. II., 897).

The use of telephones by Tatem, Jones and Underwood can certainly be no basis of a finding of Company support or domination. These men had access to the telephone in regular line of duty. Their use of the line is without significance unless it indicated Company approval of what they were doing. The Circuit Court of Appeals disposes of this contention with the flat statement (Pro. 33-34): "The use of the company telephone in communications between employees in Richmond and Norfolk was without the knowledge of supervisory employees."

Solicitation on Company Premises.

The charge is made that there was "widespread solicitation on the premises" of the Company by I. O. E. There is no evidence to support this finding. Assuming that the Board has a right to refuse to credit the testimony of the large number of witnesses who testified that there was very little solicitation on Company premises, still there must be something in the record that a reasonable mind might accept as adequate to support a conclusion such as the Board has drawn. Counsel have examined the record with some care, and venture the assertion that with the exception of the witnesses, Harrell and Judge, no witness testified that there was any solicitation on Company premises prior to August 5, 1937, when the Company had already recognized

the I. O. E. as the exclusive bargaining agent for its members, and entered into a written contract with it. There was some evidence that after August 5th, and within the ninety-day period given employees to join I. O. E., under the provisions of the contract, there was some solicitation on Company premises, but I. O. E. was already organized, recognized and functioning, and it is only reasonable to infer that the solicitation that took place arose from a desire of I. O. E. representatives to see that the few remaining non-member employees were given every chance to join. Certainly such solicitation is no basis for the inference that the original choice of employees to form an independent union could have been influenced by it.

Johnny Judge (P. A. I., 204) did testify that it was a general practice, but could give only three instances (P. A. II., 205-209). Harrell testified (P. A. I., 213-214) that he was solicited on Company property, but not on Company time, and that he signed up out in the street. Even Staunton, the man who preferred to be fired rather than join I. O. E., testified (Tr. 967) that he wouldn't say whether solicitation he saw on Company premises was before or after August 5th. The claim of "widespread solicitation on Company premises" is not supported by this evidence.

But even if there was solicitation by I. O. E. campaigners on Company premises, without objection from the Company, the same sort of solicitation was being indulged in by Mr. Latham and his employee assistants of the I. B. E. W., without objection from the Company. Six witnesses testified to this. Tatem (P. A. II., 803), Crockett (P. A. II., 828), Brown (P. A. II., 775-776), Morris (P. A. II., 7930794), Faust (P. A. II., 713), and Wallace (P. A. II., 827) all testified to solicitation by the men who favored I. B. E. W., and that such solicitation was during working hours as well as on Company premises.

The Period Required to Organize the Independent Union.

The other circumstance relied upon by the Board was the asserted speed with which the employees set up their independent organization. The inference is that this could not have been accomplished without Company approval. The court below held this inference to have no basis in facts which appear of record (Pro. 32-33). What was done, and how it was done appears in great detail. The men who led the movement to set up the independent union and those who opposed it all testified. The Board had made an exhaustive examination of the minutes and records of the independent organization before the hearing was held. It is significant that no facts are pointed out to support the conclusion that the Company assisted or encouraged the organization in any way or that those opposing the organization were made to feel that the Company disapproved their actions. The position of the Board is that it is incredible that laboring men, free from employer interference, would voluntarily choose an unaffiliated labor organization when granted an opportunity of joining unions affiliated with A. F. of L. or C. I. O. The right of employees to form, join or support an "inside" union apparently belongs only in the realm of theory and will never be exercised. The fact that employees promptly and almost unanimously choose an "inside" union is the basis of a Board inference of Company domination or interference. According to such reasoning this Court stated an impossibility when it said (*National Labor Relations Board* v. *Link Belt Co.*, 61 S. C. 358, at pp. 360-361):

> "An 'inside' union, as well as an 'outside' union may be the product of the right of the employees to self-organization and to collective bargaining 'through representatives of their own choosing' guaranteed by Section 7 of the Act."

If the fact that employees form their own collective bargaining agency and act with efficiency and dispatch is to be the basis of an inference of Company sponsorship and interference, then the door is effectively closed to the organization of "inside" organizations. Any degree of unanimity is in itself a suspicious circumstance. The better the inside union works and the more support it has from the employees it represents, the more evidence it furnishes the Board that subtle influences are at work by which the employer is interfering with the freedom of choice of the employees.

Summary and Conclusion.

The sole issue in this case is one of fact. There are no principles applied by the Court below that have not already received the approval of this Court. The issue was whether there was substantial evidence to support the finding of the Board that the Company had dominated and interfered with the formation and administration of the I. O. E. The Court followed the definition of domination and interference given by this Court in the case of *T. & N. O. R. Co.* v. *Railway Clerks*, 281 U. S. 548, 568. It applied to the evidence the test of substantial evidence in accordance with the principles laid down by this Court in the case of *Consolidated Edison Company of New York* v. *National Labor Relations Board*, 303 U. S. 197, 229) that requires that substantial evidence must be "such relevant evidence as a reasonable mind must accept as adequate to support a conclusion". Noting the absence of any evidence of any manifestation of hostility by the Company towards any outside unions (Pro. 31) or any suggestion that "the company through its supervisory employees, or otherwise, aided or assisted in any way" in the organization of I. O. E., the Court below found that there was no substantial evidence to support the finding of the Board.

No principles were followed contrary to those laid down by the decisions of this Court. The facts in the case of *National Labor Relations Board* v. *Link Belt Co.*, (*supra*) are so dissimilar to the facts in the case at bar that it is impossible to point out any principles established by that case that are in any way violated by the decision of this case.

No decisions of any other of the Circuit Courts of Appeals that conflict with the decision in this case are pointed out in the petition.

Finally the statement in the petition (P. 28) that "The decision of the Court below with respect to what conduct by employers constitutes interference with and support of a labor organization * * * raises a question of public importance concerning enforcement of the National Labor Relations Act" cannot be supported. A similar statement could be made whenever a Circuit Court of Appeals fails to find substantial evidence to support conclusions of the Board. It is difficult to conceive of any new principles that this Court could establish by a consideration of this case with respect to the powers of the Board or the duties of employers.

For these reasons it is respectfully submitted that the petitions for writs of certiorari should be denied.

THE INDEPENDENT ORGANIZATION OF EMPLOYEES
OF VIRGINIA ELECTRIC AND POWER COMPANY,
By PAUL E. HADLICK,
WM. EARLE WHITE.
Counsel for Respondent.

FILE COPY

Office - Supreme Court, U. S.
FILED
NOV 8 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 25

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

VIRGINIA ELECTRIC AND POWER COMPANY.

No. 26

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY.

WM. EARLE WHITE,
PAUL E. HADLICK,
Counsel for respondent in No. 26.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statement	2
Summary of argument	10
Argument:	
I. There is no substantial evidence to support the finding of the Board that the employer dominated and interfered with the formation and administration of I. O. E.	10
II. The cases cited by the Board have no application to this case because the facts are totally different	10
III. The Board failed to attach any significance to the conceded fact that since organization there has been no domination of I. O. E. or interference with its administration by the employer	11
Summary and conclusion	37

CITATIONS

Cases:

Chicago Junction Case, 264 U. S. 258	10, 12
Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197	10, 13, 37
International Association of Machinists v. National Labor Relations Board, 311 U. S. 72	11, 25
National Labor Relations Board v. Bradford Dyeing Association, 310 U. S. 318	11, 25, 32
National Labor Relations Board v. Columbia Enameling & Stamping Co., 306 U. S. 292	10, 13
National Labor Relations Board v. Falk Corporation, 308 U. S. 453	11, 25, 32
National Labor Relations Board v. Fansteel Metallurgical Corp., 306 U. S. 240	11, 25, 32
National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1	10
National Labor Relations Board v. Link Belt Co., 311 U. S. 584	11, 24, 25, 27
National Labor Relations Board v. Newport News Shipbuilding & Drydock Co., 308 U. S. 241	10, 11, 25
National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc., 305 U. S. 261	11, 25
National Labor Relations Board v. Sands Manufacturing Co., 306 U. S. 332	10
National Labor Relations Board v. Thompson Products Co., 97 F. (2d) 13	10, 13

Page

Texas & N. O. R. Co. v. Railway Clerks, 281 U. S. 548 37
Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board, 301 U. S. 142 11

Statute:

National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449, 29 U. S. C. A., Sec. 151, et seq.):
Section 7 ..... 36, 37
Section 10 2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 25

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

VIRGINIA ELECTRIC AND POWER COMPANY.

No. 26

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF FOR THE INDEPENDENT ORGANIZATION OF EMPLOYEES OF THE VIRGINIA ELECTRIC AND POWER COMPANY.

Opinions Below.

The opinion of the Circuit Court of Appeals is reported in 115 Fed. (2d), 414, and is printed at pages 1005 to 1019

of the record. The decision and order of the National Labor Relations Board can be found in 20 N. L. R. B., 911, and are printed on pages 952 to 980 of the record.

Jurisdiction.

The jurisdiction of this Court rests upon Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, and upon Section 10(e) and (f) of the National Labor Relations Act. The decrees of the Circuit Court of Appeals were entered on November 12, 1940 (R. 1019-1021) in two distinct proceedings for review of the Board's order above mentioned. The petition for writs of certiorari was filed February 12, 1941, and was granted March 31, 1941 (R. 1022-1023).

Questions Presented.

Three questions are presented by the brief for the National Labor Relations Board. In this brief only that part of the first question will be discussed relating to whether there is substantial evidence to support findings of the Board that the Virginia Electric and Power Company dominated, interfered with and supported the Independent Organization of Employees of Virginia Electric and Power Company.

Statement.

The findings of the Board with respect to The Independent Organization of Employees of Virginia Electric and Power Company (hereinafter referred to in this brief as I. O. E.) are printed in the record on pages 959 to 969. The statement in the brief for the Board, which attempts to summarize these findings, omits so much that is material to the consideration of the question presented that a complete statement of the facts has been deemed necessary.

For many years prior to 1937 there had been no labor organization representing employees of Virginia Electric

and Power Company in their dealings with the Company.

On April 12, 1937, this Court sustained the constitutionality of the National Labor Relations Act. On April 26, 1937, a bulletin was issued over the signature of the President of the Company stating the position of the Company regarding its future relations with its employees (Bd. Ex. 3, R. 35).

On May 11, 1937, in response to an unsigned notice prepared by Ruett, a large group of employees in the Norfolk Transportation Department met in the Company Y. M. C. A., in Norfolk, for the purpose of devising some means for making a request to the Company for a wage increase (R. p. 64-67; 94; 789). At this meeting another employee, Elliott, presented a prepared petition to be signed by the employees asking for an increase in wages, and improved working conditions (R. 66-67; 94-97). This petition was forwarded, through Mr. Bishop, to Mr. Throckmorton, Vice-President in charge of operations in Norfolk, who, in turn, sent it to Mr. Holtzclaw, President of the Company, in Richmond. The object of this petition was to obtain benefits for employees of the Norfolk Transportation group alone.

About the same time another petition for wage increases was presented by a few employees in the Norfolk Transportation Shops, and a group of about ten operators in the Richmond Transportation Department called on their superintendent asking for wage increases and some improved working conditions (R. 40-41; 52; 116; 256; 316; 334-35; 372; 432-433; 450; 808).

Following receipt of these requests and petitions, on May 24, 1937, the employees were called together by their local superintendents, and were asked to select representatives to attend one meeting in Richmond and one meeting in Norfolk where an important message would be delivered. There

was no compulsion involved and all groups were not approached. Most of the groups did send representatives to the meetings (R. 168-169; 373-375; 388-389; 390-391; 469; 477; 485; 495-496; 503-504; 515-516; 524-525; 554-555; 563-565; 582-584; 675; 695-696; 739-740; 781; 808).

To these two meetings Mr. Holtzclaw, in Richmond, and Mr. Throckmorton, in Norfolk, read a prepared statement (Bd. Ex. 4, R. 822).

After the reading of the statement, certain employees asked whether they had to join a labor union, and were told that they did not. To questions as to what sort of labor organization they should join, the answer was made that the Company had no suggestions to offer. Thereafter, the Company officials withdrew, as did a majority of the employees (R. 70; 99; 584-586; 741-790). In both Richmond and Norfolk, a small group remained, but took no action except to decide to report to their respective groups what had taken place, and find out what they wanted to do (R. 586-587; 704; 741). Thereafter, reports were made to meetings of the employees on Company premises, and frequently during working hours (R. 587-592; 808).

The events, thus far related, according to the contention of the Board in its brief, constitute the basis for the finding of domination and control of I. O. E. In its brief the Board says (p. 5):

> "By the speeches and through the method of calling and holding the meetings, the Company gave impetus to and assured the creation of an 'inside' organization."

The Board would have this Court sustain a presumption that whatever happened thereafter in the way of employee organization was in violation of the Wagner Act.

For this reason the events that followed must be borne in mind and considered in their chronological order and

setting. The record shows in detail how the I. O. E. came into being. The testimony is uncontradicted. The Board may have been unwilling to credit it, but there is no other evidence, so if the Board could find that the Company dominated or interfered with the formation of I. O. E., it must find the evidence here or nowhere.

The Board in its findings stated that "thereafter meetings of the steering committees were held on the premises of the respondent (Company) for the purpose of forming an independent, system-wide labor organization". The facts as to these meetings are, as follows:

It is admitted that following the May 24th meeting in Richmond and Norfolk, some meetings of employees were held on Company premises.

The meetings held prior to June 1, 1937, were, without exception, meetings called for the purpose of hearing reports of representatives who attended the meetings of May 24th. At these meetings, so far as the evidence shows, when any action was taken at all, it was taken to ascertain by various means what the employees in the group wanted to do. At Cove Street, in Norfolk, there was a secret ballot (R. 588-589). At the Service Building, in Richmond, apparently the men voted openly (R. 743). At Reeves Avenue, the Generating Plant, in Norfolk, the vote was open (R. 722-723). At Twelfth Street, the Generating Plant in Richmond, the ballot was not even taken on Company premises, but was a secret ballot collected at the homes of the employees (R. 782-783). The Gas Department and the shops are covered under the stipulation that the meetings there were similar to the meeting held at Cove Street (R. 808). All of these meetings had one thing in common—the employees everywhere voted their choice in favor of an independent organization as against C. I. O., A. F. of L., and no organization. They were given their choice, so far as

the evidence discloses, without any suggestion, interference, or supervision from the Company.

It is obvious that these meetings were not held "for the purpose of forming a system-wide independent organization". The Transportation employees in Norfolk voted to form the "Employees Association of Committees", under the leadership of Elliott (R. 804), and the Transportation employees in Richmond voted to form their own organization, and immediately rented their own quarters, and never held any further meetings on Company premises (R. 807).

There was no communication between employees in Norfolk and in Richmond until after June 1, 1937 (R. 715). All meetings up until that time were of groups of similarly employed men in a single division. Clearly no system-wide organization had been generally contemplated. On June 1st there was a meeting in Richmond, called by Holzbach, of representatives of various Richmond groups, and this meeting was held on Company premises, but not during working hours. Here, for the first time, a system-wide organization was discussed, and a committee was appointed to find out what employees in Norfolk were doing, and to get a lawyer to draw up a tentative constitution for a system-wide independent organization. No form of organization was determined (R. 745).

On June 1, 1937, representatives of various groups met in Norfolk on Company premises, but not during working hours, and heard Elliott explain his proposed "Employees Association of Committees". The meeting took no action except to direct that the proposal be printed and distributed to the representatives. No action was taken looking to the formation of any organization (R. 644-645).

On June 3rd a meeting of representatives from Norfolk and Richmond was held in Petersburg on Company premises, but not during working hours, at which nothing was agreed upon, except that a lawyer would be retained, to

draw up a constitution and by-laws. There was no definite idea of what sort of organization would be set up, or whether the groups would approve anything (R. 706-707; 766).

On June 7, 1937, a special meeting was called in Norfolk of employee representatives from each of the departments. This meeting was held in the Vepco Auditorium. Tatem was elected chairman in place of Nickerson (Bd. Ex. 20; R. 841). Elliott and other transportation representatives refused to vote, because they could only cast one ballot for the entire department instead of four ballots.

On June 9, 1937, representatives of different departments met in the Service Building, in Richmond, and discussed changes to the proposed constitution and by-laws, submitted by the attorney (R. 932).

On June 9, 1937, a special meeting was called in the Company Y. M. C. A., at the car barns on 18th Street, in Norfolk, of bus and street car operators. The meeting was attended by Underwood, from Richmond, at Tatem's request (R. 767-768; 802). The meeting decided to adopt Elliott's E. A. C. plan, and form a separate organization of transportation workers (R. 804). Applications were signed by 115 men (less than a majority) over a period of time ending June 11th or 12th, 1937 (R. 803).

On June 11, 1937, a second meeting was held in Norfolk by representatives of various groups sponsoring the system-wide organization (Int. Ex. 6; R. 889). The Norfolk transportation representatives refused to participate. The proposed constitution was discussed (R. 707-708).

There were no meetings on Company property by members or representatives, attempting to form I. O. E., subsequent to June 14, 1937 (R. 808).

The constitution, as originally prepared, was submitted to a joint meeting of committee members from Norfolk and Richmond, held at the American Legion Hall, in Rich-

mond. After extensive modification, it was adopted by those present (Int. Ex. 22; R. 915). This did not bind any employees to become members of the proposed organization. The men present merely agreed to take the constitution and by-laws, as finally approved, and present them to their fellow-employees. The I. O. E. was a plan that employees could accept if they wanted it; otherwise, it would amount to nothing. The constitution was the work of the representatives of employees, embodying the principles that those men believed accorded with the desires of their constituents (R. 746-747).

Copies of the constitution were mimeographed, and membership cards were printed. These were ready for distribution by June 17th, when the men in Richmond began to sign them (R. 748-749). Very little was done in Norfolk until June 22nd, when a mass meeting, attended by more than five hundred employees, was held at the Blair Junior High School. At this meeting the constitution and by-laws were explained to those present. Organizers of C. I. O. were present at this meeting, and the dramatic touch was provided by Elliott, who addressed the meeting, charged that the Company was fostering the I. O. E., and had offered him a job to quit fighting it. He concluded by announcing that he intended to join the C. I. O. (R. 598-599; Int. Ex. 8; R. 891-892).

By July 12th, 2000 employees had signed applications for membership in the independent organization (R. 725; 734; 1027). Transport Workers Union, a C. I. O. affiliate, had formed a Local by this time, composed of transportation workers in Norfolk (R. 114). International Brotherhood of Electrical Workers, an affiliate of A. F. of L., was active in soliciting members among electrical employees (R. 191). Neither of these membership drives was very successful, as no substantial number of employees ever joined either of these unions. On July 17th, the independent

group completed their organization, and formulated demands to be made on the Company (Int. Ex. 16-A to 16-F, incl.; R. 896-901), and on July 19th, these demands were presented and request for recognition was made (Bd. Ex. 5; R. 823-824). On July 30th, a meeting was held at which the Company recognized the Independent as exclusive bargaining agent of its employees upon being presented 2543 signed membership cards (R. 655). Thereafter, in negotiations covering three days, a contract was agreed upon by the committees, which was later ratified by the employees and by the Company. This agreement was executed August 5, 1937 (Bd. Ex. 19; R. 826-839). On July 20, 1937, Transport Workers Union had filed with the Regional Director of the National Labor Relations Board charges that Virginia Electric and Power Company was dominating and interfering with the formation of the independent association. On August 5th, representatives of the independent, with their counsel, met the Regional Director, in Norfolk, and at that time related to him the entire history of the association (R. 712-713). On August 26th, the Transport Workers Union filed additional charges, complaining of the contract executed August 5th. On February 23, 1938, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, which had attempted to organize transportation employees after Transport Workers Union withdrew, filed charges with the Regional Director of the National Labor Relations Board, making practically the same charges that had been filed by Transport Workers Union. Finally, on April 12th and 13th, International Brotherhood of Electrical Workers filed similar charges (R. 953). An investigator from the Board went through all the files and records of The Independent Organization of Employees, and talked to most of the employees who had been active in forming that organization

(R. 591). Photostatic copies were made of many letters and other papers, and the officers of the independent cooperated in every way to give him all available information.

Summary of Argument.

THE FINDING OF THE BOARD THAT VIRGINIA ELECTRIC AND POWER COMPANY DOMINATED AND INTERFERED WITH THE FORMATION AND ADMINISTRATION OF I. O. E. IS NOT BASED UPON SUBSTANTIAL EVIDENCE AND THE ORDER DISESTABLISHING I. O. E. IS A DENIAL TO THE EMPLOYEES OF VIRGINIA ELECTRIC AND POWER COMPANY OF THE RIGHT OF SELF-ORGANIZATION AND TO BARGAIN COLLECTIVELY THROUGH REPRESENTATIVES OF THEIR OWN CHOOSING

I. There is no substantial evidence to support the finding of the Board that the employer dominated and interfered with the formation and administration of I. O. E. The finding, therefore, is invalid. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Consolidated Edison Co.* v. *N. L. R. B.*, — U. S. 197; *N. L. R. B.* v. *Columbia Enameling & Stamping Co.*, 306 U. S. 292; *N. L. R. B.* v. *Sands Mfg. Co.*, 306 U. S. 332; *The Chicago Junction case*, 264 U. S 258, at p. 265; *N. L. R. B.* v. *Thompson Products Co.*, 97 F. (2d) 13.

The Board has disregarded uncontradicted testimony in order to reach conclusions based on conjecture.

II. Since in this case there was no attempted conversion of a pre-existing company union, and since the plan of organization of I. O. E. permits no interference by outside agencies in its administration, and because of the fact that I. O. E. was the voluntary choice of ninety per cent of the eligible employees of the Company before it was recognized by the Company as a bargaining agency for them, and in view of the further fact that I. O. E. has actively functioned in an effective manner, it is not subject to the criticism made in the cases of *N. L. R. B.* v. *Newport News Shipbuilding &*

Drydock Co., 308 U. S. 241; *N. L. R. B.* v. *Penna. Greyhound Lines, Inc.*, 305 U. S. 261; *Washington, Va. & Md. Coach Co.* v. *N. L. R. B.*, 301 U. S. 142; *N. L. R. B.* v. *Bradford Dyeing Assn.*, 310 U. S. 318; *N. L. R. B.* v. *Link Belt Co.*, 311 U. S. 584; *International Assn. of Machinists* v. *N. L. R. B.*, 311 U. S. 72; *N. L. R. B.* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240; *N. L. R. B.* v. *Falk Corp.*, 308 U. S. 453.

III. The Board failed to attach any significance to the conceded fact that since organization there has been no domination of I. O. E. or interference with its administration by the employer (R. 1012).

ARGUMENT.

I. The finding of the Board with respect to I. O. E. is, as follows (R. 968-969):

> "We find that the respondent has dominated and interfered with the formation and administration of the I. O. E., and has contributed support to it; that it has thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

It is this finding that is not based upon substantial evidence but instead is based upon unwarranted inferences in conflict with the uncontradicted, credible testimony in the record.

As a consequence of this invalid finding of fact, the order of the Board directed the Company to (R. 979) "(a) withdraw all recognition from The Independent Organization of Employees of the Virginia Electric and Power Company as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of employment, and completely disestablish The Independent Organization of Employees of the Vir-

ginia Electric and Power Company as such representative."

The Company was also ordered to cease and desist from (R. 978) "(b) in any manner giving effect to its contract heretofore described with the Independent Organization of Employees of the Virginia Electric and Power Company, or to an extension, renewal, modification or supplement thereof, or to any successor contract with the Independent Organization of Employees of the Virginia Electric and Power Company which may now be in force".

The Circuit Court of Appeals found (R. 1012-1013):

> "The Board's finding of domination and interference is based upon the fact that the association came into being as a result of the May 24th meetings and the address of the president, that the president at the meeting spoke of a wage increase to be negotiated by the organization, that the association was organized promptly and within a few weeks after these meetings, that meetings of employees looking to the organization of the association were held on the company's premises, that its bulletin boards were used for posting notices of these meetings and its telephone between Richmond and Norfolk used in connection therewith, and that persons were solicited for membership in the association on the company's premises. We do not think, however, that any of these circumstances, or all of them taken together, when viewed, as they must be, in the light of the surrounding circumstances shown by the record, constitute any substantial evidence of the domination or interference forbidden by the Act."

This Court in other administrative law cases, as well as under the Labor Act, has repeatedly asserted that the findings of fact of such quasi-judicial bodies are "conclusive, but only if supported by evidence". *N. L. R. B.* v. *Jones & Laughlin Steel Corp., The Chicago Junction* case, 264 U. S. 258, at page 265.

The evidence required for such findings of fact has been described by this Court as follows:

> "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."
> *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, at p. 229.

Again, in the same opinion, this Court says:

> "But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence."
> *Consolidated Edison Co.* v. *N. L. R. B., supra,* at p. 230.

This was followed by the case of *N. L. R. B.* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, at pages 299, 300, where the court, after quoting from the *Consolidated Edison* case, *supra,* added:

> "• • • and it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury."

This Court, in the *Consolidated Edison* case, *supra,* cited the case of *N. L. R. B.* v. *Thompson Products, Inc.*, 97 F. (2d), 13, at page 15. The language used by the Circuit Court in that case is as follows:

> "The rule of substantial evidence is one of fundamental importance and is the dividing line between law and arbitrary power. Testimony is the raw material out of which we construct truth, and, unless all of it is weighed in its totality, errors will result and great injustices be wrought."

With the principles of law above enunciated in mind it is impossible to find in the evidence any foundation for the con-

clusion reached by the Board that "the I. O. E. (R. 967) owes its existence and its form to activities of the respondent." Still less evidence is there to justify the statement of the Board that (R. 965) "the respondent's action converted the delegates isolated from their constituents and under the immediate influence of the officials, into virtual representatives of the employer among the employees who had elected them".

Not only is there a lack of substantial evidence to substantiate the conclusion reached, but there was uncontradicted testimony that necessarily leads to an opposite conclusion.

The record leaves beyond question the fact that at the meetings referred to, held a few days after the two meetings of May 24th, the employees were given the right to express their preference as to whether they wanted no organization, the C. I. O., the A. F. of L., or an independent organization (R. 587, R. 782-783, R. 787-788, R. 808). These meetings were restricted to non-supervisory employees; there is no claim that any supervisory officials were present at these meetings. The evidence with respect to the meeting of the Line Department in Norfolk is very full (R. 587-592, Int. Ex. 3-A to 3-G, incl., R. 888-889, R. 676-677, R. 696-697, R. 185-186). In that case the choice of the men was ascertained by secret ballot, and then the representative chosen was authorized in writing to represent the employees.

The Board inferred that the vote taken at these meetings in favor of forming an unaffiliated organization was "pursuant to the suggestions contained in the address of May 24th". This inference is evidently coupled with another inference that those who attended the meetings of May 24th became "virtual representatives of the employer among the employees who had elected them". Inferences must be based on fact. The only facts presented by the Board as the basis for these inferences are the text of the address

of May 24th, the mechanics of the meetings at which the address was delivered, and the subsequent vote taken by the employees in favor of forming an unaffiliated organization to represent them.

There were other facts in the record, not mentioned by the Board, but which were not contradicted, and, therefore, must be considered. One of these is that the representatives to the meetings of May 24th were chosen by the men themselves and not selected or suggested by their supervisors (R. 185; R. 582-584; R. 675; R. 695-696; R. 739-740; R. 781). There is no evidence that any supervisory official had any connection with the selection of these representatives, and no scintilla of evidence that the Company had any way of knowing in advance who would be sent to the meetings.

Another fact is that records were kept of these meetings of the employees, and these records definitely show what took place there. No pressure was put on the employees to take any action one way or the other. In most instances the employees had the opportunity of expressing their preference by secret ballot. It is hard to imagine how more safeguards could be thrown around a free choice by the employees.

Still another fact not mentioned by the Board is that a large number of witnesses testified as to what took place at these meetings, and were subject to cross-examination by attorneys for the Board. None of these witnesses testified that the result of the votes taken at those meetings was "pursuant to the suggestions contained in the address of May 24". Fourteen men who attended the meetings of May 24, testified, and none of them indicated that they had become a virtual representative of the Company. Of these fourteen men, the Board put on two witnesses, one of them Elliott, a former employee who at the time of the hearing before the Trial Examiner was an organizer for the A. F. of

L., and the other, Ruett, an employee who had been discharged by the Company, and who, at the time of the hearing was plaintiff in a suit against the Company. Both of these men testified as to what took place at the Richmond meeting. I. O. E. presented five witnesses who attended this meeting, and the Trial Examiner called one. Somewhere in the testimony of these eight witnesses the Board must have found evidence to justify its conclusion that the men who attended this meeting were converted into "virtual representatives of the employer among the employees who had elected them."

Robert E. Elliott testified (R. 100) that after the Company officials left the meeting, he did not remain to participate in the meeting of employees that then took place, but instead returned to Norfolk. Elliott testified (R. 101) that he wanted to await action on the petition of the Norfolk Bus and Rail Operators before taking any further action. Evidently, he was not converted.

Ruett testified that he returned to Norfolk and participated in the formation of the Employees Association of Committees (R. 71-72), although he left it up to Hough and Elliott to work out the organization. Certainly, he was not a very enthusiastic convert. The Norfolk Transportation employees voted to give Elliott's Employees Association of Committees a thirty-day trial, to negotiate with the Company, and, if unsuccessful, to take a vote to join either the C. I. O. or the A. F. of L. (R. 180). Ruett's testimony shows such confusion of recollection, and he contradicts himself so frequently, that it is difficult to accept any of it with certainty, but nowhere does Mr. Ruett intimate that the address delivered, or the mechanics of the Richmond meeting, made him, in any way, a representative of the Company among the employees.

M. D. Hough accompanied Elliott and Ruett to the Richmond meeting. While his recollection of the discussion

that took place after the meeting is different from that of Elliott and Ruett (R. 800-801), it is generally admitted that he was active, along with Elliott, in promoting the Employees Association of Committees, which was to act independently of the Steering Committee headed by Tatem, and he seconded Elliott's efforts to negotiate separately with the Company officials. If the Company was dominating the formation of I. O. E., Mr. Hough was a poor company representative.

A. E. Bertollett, who heard the address by Mr. Holtzclaw, testified (R. 740-741) that he heard no statement made that indicated any preference as to what sort of union employees should join, nor did he receive any impression that the Company thought any organization should be formed. Bertollett remained after the Company officials left, and participated in the meeting, which decided that delegates should report the position of the Company to their respective constituents, and at some subsequent time get together again, and see what the reaction had been upon the employees (R. 742). When Bertollett reported to his group, a vote was taken, at which the men expressed their preference for C. I. O., A. F. of L., an independent organization, or no organization (R. 743). A company representative would logically have avoided any such expression of choice.

Walter Holzbach testified (R. 790) that no suggestion was made as to the particular kind of organization preferred by the Company. He was elected chairman of the meeting of the employees that immediately followed the withdrawal of the Company officials. He called a meeting of the employees in the Service Building, in Richmond, and reported to them what had happened at the meeting of May 24th. His influence among his fellow employees was not sufficient to elect him their representative on the steering committee. They chose Staughton instead (Int. Ex. 33;

R. 929-930). If he was a representative of the employer, Mr. Holzbach seems to have been a failure.

George Roberson testified (R. 781-782) that the impression he drew from the address of May 24th was "that we could join C. I. O., we could join the A. F. of L., or we didn't have to have any organization; in other words, it was our baby". Following the address, he reported to his group and then he had some ballots made up by his brother, who worked for the C. & O. Railway, which he distributed to his men at their homes, on which ballots they were asked to express their preference for C. I. O., A. F. of L., an independent organization, or no organization. The results were (R. 783) C. I. O., 22; A. F. of L., 1; 92 or 94 for an independent organization, and 6, 7 or 9 for no organization. There is no evidence here showing the conversion of Roberson into a Company representative.

George Colonies also attended the meeting of May 24th, and it was stipulated (R. 787) that he corroborated the testimony of the witness Roberson.

L. D. Edwards attended the meeting, and his evidence was stipulated (R. 808-809). The record is silent as to what impression Edwards received at the meeting. There is no basis here for any finding that he was converted at the meeting.

As to the Norfolk meeting of May 24th, all of the testimony of the employees came from witnesses presented by I. O. E. Six men testified, W. W. Faust, a lineman, P. D. Brown, a cable splicer, W. O. Morris, a lineman, and a Vice-President of the I. B. E. W. Local, D. M. Tatem and N. R. Jones, switchboard operators, and C. G. Steele, an electrician. The testimony of Faust presents fairly the facts to which all testified. He testified (R. 586) that he received no impression that the Company favored any particular line of action on the part of its employees with respect to labor organization or affiliation, but only that the Company was willing to cooperate

with any organiza ion. The only action taken after the Company officials le"t the meeting was to adopt a motion by Tatem that those present take back to their respective groups, the substance of the meeting, and see what they wanted to do about it. Thereafter, at Cove Street, the men in the Distribution Department, by secret ballot, voted to form an independent organization. Twenty (20) men voted for C. I. O., 6 for outside help, 126 for collective bargaining, and 1 for "just anything". At this meeting Staunton, Davis and some others were active participants in favor of outside affiliation (R. 588-591). If the Company expected Faust to be a representative among the employees to help form an inside union, acceptable to it, then it appears Faust was not sufficiently converted. He joined Davis and Staunton in requesting Latham, the I. B. E. W. organizer, to come to Norfolk, and joined I. B. E. W. (R. 192; R. 669-67). This action was taken at the very height of the campaign between I. O. E. and I. B. E. W. for members. Brown, who also attended the meeting of May 24th, and who was charged by Davis, Judge and Harrell with being a Company representative, was ineligible to serve as a representative under the provisions of the constitution and by-laws of I. O. E., and, consequently, dropped out of the picture after that time (R. 684-685). Morris, from the Portsmouth Line Department, was authorized by his group to vote for anything the Norfolk Line Department wanted (R. 696). Tatem, Jones and Steele, who worked in the Generating Department, were only three of about 18 employees from that department who attended the meeting (R. 704; R. 721-733). On May 27th, Jones, at the suggestion of fellow employees, called a meeting to report on the May 24th address, and to ascertain the wishes of his group. At this meeting, a majority of the Production Operating employees were present, and voted unanimously for an independent organization (R. 722-723).

Without going further into a detailed statement of the facts, it is certainly obvious that there is no evidence of any kind in the record to support the finding of the Board that the address of May 24, 1937, and the way this meeting of the employees was staged, had any influence on the choice of the employees of the Company to form the I. O. E.

Even though the members of the Board are to be considered as specialized and experienced experts in their appraisal of the evidence, there must be some evidence to appraise. The Board is not at liberty arbitrarily to disregard uncontradicted facts and substitute inferences as a basis of its conclusions.

But assuming for the argument that the decision of the employees at these initial meetings to form an unaffiliated organization was influenced by the address of May 24th, it should not be overlooked that the vote of the employees at these meetings was not final and did not bring any organization into existence. The adoption of the constitution and by-laws of I. O. E., at the meeting of June 15, 1937, did not bind any employee. In order to represent the employees of Virginia Electric and Power Company, I. O. E. had to be designated by each employee in a written application for membership, and this, of course, necessitated a membership campaign. The Board finds that this campaign started on June 17th and continued for about three weeks (R. 966). As a matter of fact, the campaign was successfully completed by July 2nd, when the primary for nominating representatives was held; 1912 employees participated (R. 1027). It was conducted entirely by the members of the organization themselves. The Board does not point to any participation in this membership campaign by supervisory employees of the Company; it merely mentions certain circumstances on which it bases its finding of domination and interference. The claim upon which the Board seems to rely most is that there was widespread solicitation on Com-

pany premises by those seeking to organize I. O. E. There is no evidence to justify the expression of the Board that such solicitation was "widespread". Assuming that the Board has a right to refuse to credit the testimony of the large number of witnesses who testified that there was very little solicitation on Company premises, yet there must be something in the record that a reasonable mind might accept as adequate to support a finding such as the Board has made. With the exception of the witnesses, Ruett, Harrell and Judge, no witness testified that there was any solicitation on Company premises prior to August 5, 1937. There was some evidence that after August 5th, and within the ninety-day period given employees to join I. O. E. under the provisions of the contract, there was some solicitation on Company premises, but I. O. E. was then organized, recognized and functioning.

Ruett testified (R. 77) that he signed men up in I. O. E. while both he and they were working but not when foremen or supervisors were present. He does not state that he signed very many application cards on Company premises or while men were at work, and his testimony does not justify use of the term "widespread solicitation".

Johnny Judge did testify that it was the general practice but could give only three instances (R. 193-197). Harrell testified (R. 209) that he was solicited on Company property but signed up out in the street. Even Staunton, the man who preferred to be fired rather than join the I. O. E., testified (R. 174-176) that he was unwilling to say whether solicitation he saw on Company premises took place before or after August 5th. Certainly there appears no justification in the evidence for the Board's statement that there was widespread solicitation on Company premises.

But even if there was solicitation by I. O. E. campaigners on Company premises, without objection from the Company, this has no significance if the same form of solicita-

tion was being carried on by the representatives of other unions without objection from the Company. Six witnesses testified to this: Tatem (R. 710), Crockett (R. 731-732), Gunter (R. 732), Brown (R. 684), Morris (R. 700), and Wallace (R. 730-731). All testified to solicitation during working hours as well as on Company premises by those conducting the membership campaign of the I. B. E. W. There was no denial of this. The Board in its brief attempts to meet this with the statement that there was not as much solicitation for I. B. E. W. as for I. O. E. This begs the question. The important issue is whether favors were shown I. O. E. that were denied other competing organizations. The evidence is clear that the Company accorded the same treatment to all.

There is no evidence in the record that the Company entered into this contest for members in any way whatever. Transport Workers Union was attempting to organize the bus and rail operators in Norfolk. I. B. E. W. was attempting to organize the electrical workers in both Richmond and Norfolk. At the very height of the membership campaign, on June 24, 1937, the Company issued a bulletin (Res. Ex. 7; R. 860-861), stating:

> "Employees of Virginia Electric and Power Company have a right to self-organization, to form, join or assist labor organizations, and to bargain collectively through representatives of their own choosing, and the Company has not sought, and does not seek, to dominate or interfere with employees in the exercise of any of their rights, individually or collectively."

The Board does not mention this bulletin, but there is no question as to the fact that it was issued, nor can its significance be disregarded.

It is perfectly clear, therefore, that there is no evidence of rational probative value to support the conclusion of the Board (R. 968) that "a majority of the employees

had signed as a result of widespread solicitation on the premises of the respondent throughout the entire system".

The other circumstances relied upon by the Board to sustain its finding of Company favoritism are as follows:

(1.) Bulletin boards of the Company were used for posting notices of meetings.

(2.) Telephone connections of the Company were used by committeemen to communicate with each other.

(3.) The I. O. E. was completely organized and had a majority of the employees as members within six weeks after the meeting of May 24th.

The Circuit Court in its opinion (R. 1013) calls attention to the fact that only one instance of the use of a Company bulletin board is established, and that the case where Holzbach posted a notice of his meeting of May 26th (R. 795-796).

The use of telephones by Tatem, Jones and Underwood can certainly be no basis of a finding of Company support or domination. These men had access to the telephone in regular line of duty. Their use of the line is without significance unless it indicated Company approval of what they were doing. The Circuit Court of Appeals disposes of this contention with the flat statement (R. 1016):

> "The use of the company telephone in communications between employees in Richmond and Norfolk was without the knowledge of supervisory employees."

The other circumstance relied upon by the Board was the asserted speed with which the employees set up their independent organization. The inference is that this could not have been accomplished without Company approval. The court below held this inference to have no basis in facts which appear of record (R. 1015). What was done and how it was done appears in great detail. The men who led

the movement to set up the independent union and those who opposed it all testified. The Board had made an exhaustive examination of the minutes and records of the independent organization before the hearing was held. It is significant that no facts are pointed out to support the conclusion that the Company assisted or encouraged the organization in any way or that those opposing the organization were made to feel that the Company disapproved their actions. The position of the Board is that it is incredible that laboring men, free from employer interference, would voluntarily choose an unaffiliated labor organization when granted an opportunity of joining unions affiiliated with A. F. of L. or C. I. O. The right of employees to form, join or support an "inside" union apparently belongs only in the realm of theory and will never be exercised. The fact that employees promptly and almost unanimously choose an "inside" union is the basis of a Board inference of Company domination of interference. According to such reasoning this Court stated an impossibility when it said (*National Labor Relations Board* v. *Link Belt Co.*, 311 U. S. 584):

> "An 'inside' union, as well as an 'outside' union may be the product of the right of the employees to self-organization and to collective bargaining 'through representatives of their own choosing' guaranteed by Section 7 of the Act."

If the fact that employees form their own collective bargaining agency and act with efficiency and dispatch is to be the basis of an inference of Company sponsorship and interference, then the door is effectively closed to the organization of "inside" unions. Any degree of unanimity in itself will be a suspicious circumstance. The better the inside union works and the more support it has from the employees it represents, the more evidence it will furnish the Board that subtle influences are at work by means of

which the employer is interfering with the freedom of choice of the employees.

II. I. O. E. is an independent bargaining agency and its plan of organization is such that no interference or domination by the employer is possible. It thus differs from cases previously before this Court because such condemned plans of organization were either (a) conversions of pre-existing company-dominated unions or (b) were subject to interference or veto by the Company, or (c) failed to meet the necessary requirements of a bargaining agency; such as in the cases of:

N. L. R. B. v. *Newport News Shipbuilding & Drydock Co.*, 308 U. S. 241;

N. L. R. B. v. *Penna. Greyhound Lines, Inc.*, 303 U. S. 261;

N. L. R. B. v. *Bradford Dyeing Association*, 310 U. S. 318;

N. L. R. B. v. *Link Belt Co.*, 311 U. S. 584;

International Assn. of Machinists v. *N. L. R. B.*, 311 U. S. 72;

N. L. R. B. v. *Falk Corp.*, 308 U. S. 453;

N. L. R. B. v. *Fansteel Metallurgical Corp.*, 306 U. S. 240.

The effect of the order of the Board is to nullify the wishes of those employees who have selected I. O. E. as their bargaining agent and who have admittedly gained substantial benefits from its efforts.

The I. O. E. is an independent bargaining agent. Here, as in the court below, there is no contention to the contrary. The opinion of the Circuit Court of Appeals states (R. 1012):

> "There is no contention that there is anything objectionable in the constitution or by-laws of the association or in the trade agreement arrived at with the

company or in the manner in which it was negotiated; and it is not contended that the company contributes any support to the association or dominates it in any way, or in any way interferes with the control exercised over it by its members."

On the basis of the evidence in this case no contrary contention could be made. The constitution and by-laws of I. O. E. assure the complete control of that organization by its members. Amendments of the constitution and by-laws depend on the will of its members alone. Representatives are nominated and elected by secret ballot, and these elections are supervised by duly appointed members of the organization (Bd. Ex. 36; R. 844-855). Meetings of members are held regularly, and minutes are kept of all meetings (R. 576-577; 581). A large number of these minutes are filed as a part of the record (Int. Ex. 19-A to 19-S, incl., R. 903-913). Union offices are maintained in Norfolk and Richmond with meetings held in each place (R. 580-581). Each member of the organization gets annually an itemized statement of all its receipts and disbursements certified by an independent accountant (R. 580). The contract between I. O. E. and the Company, in addition to the pay increases, gained other advantages such as time and one-half for overtime, the limitation of the work week, and a grievance adjustment procedure (Bd. Ex. 9; R. 826-839). After execution of the contract, I. O. E. remained active in adjusting grievances, seeking pay adjustments, and in April, 1938, was engaged in trying to negotiate amendments to the contract (R. 628-629). In short, I. O. E. is an active labor organization, entirely free from employer domination, interference or support.

In the cases of *N. L. R. B.* v. *Newport News Shipbuilding & Drydock Co., supra, N. L. R. B.* v. *Penna. Greyhound Lines, Inc., supra, N. L. R. B.* v. *Link Belt Co., supra, International Assn. of Machinists* v. *N. L. R. B., supra,* and

N. L. R. B. v. *Falk Corp., supra*, there was an attempted conversion of a pre-existing company-dominated union, and this Court stressed the necessity for "wiping the slate clean and affording the employees an opportunity to start afresh in organizing for the adjustment of their relations with the employer". (*N. L. R. B.* v. *Newport News Shipbuilding & Drydock Co., supra.)*

In the case of I. O. E., there was no "old" company association or union involved, and no group of employees accustomed to dealing with the management in the company union method. There was nothing on the slate to be wiped off.

In this case there was no participation by supervisory employees in devising the plan of organization or soliciting membership therein as was the case in *N. L. R. B.* v. *Bradford Dyeing Assn., supra.*

In this case there was no hasty recognition of the organization by the employer on the unsupported word of a few employees as in the case of *N. L. R. B.* v. *Falk Corp., supra.*

The Company in this case has no "veto" power, such as was a factor in the case of *Newport News Shipbuilding & Drydock Co., supra.*

The Board seeks to sustain its position by claiming an almost exact similarity between the present case and the case of *N. L. R. B.* v. *Link Belt Co.*, 311 U. S., 584. In the *Link Belt* case, this Court recited "the whole congeries of facts before the Board", which sustained its findings. The circumstances in that case which are wholly absent from the present case are:

(a) A previous company-dominated union of employees.

(b) The maintenance by the employer of the previous company-dominated union until completion of the membership drive for the new union.

(c) The prominence of the company-dominated union representatives in the membership drive.

(d) The support given the membership drive by the supervisory staff, including the active solicitation of memberships by company foremen and the signing of applications by foremen for illiterate workmen.

(e) The action of the employer in delaying the announcement of its attitude to the employees and to the supervisory staff until after the new independent organization had secured a majority at the plant.

In the case of the I. O. E. there was no previous organization at all, and, consequently, no employee agency that the company could use to establish a new organization to its liking. There was no participation by supervisory employees in the membership drive for I. O. E., and there were no employees who, by reason of their past association with any organization, could be regarded by their fellow employees as qualified to express the attitude of the Company toward the proposed organization.

The Company in this case expressed its attitude of impartiality not only in the address of May 24th, but particularly in the bulletin issued on June 24th, in which it expressly stated (R. 861):

> "The Company has not sought and does not seek to dominate or interfere with employees in the exercise of any of their rights, individually or collectively."

This bulletin was issued within two days after the membership drive had started in Norfolk and within a week of the time the membership drive had started in Richmond, and before I. O. E. had been joined by anything like a majority of employees of the Company. It was issued at a time when Transport Workers Union had organized a

Local among transportation employees in Norfolk, and I. B. E. W. had a full-time organizer attempting to sign up employees of the electrical department. In short, the membership campaign of I. O. E. was conducted against the competition of both C. I. O. and A. F. of L., after the Company had openly expressed its attitude of impartiality and after it had specifically instructed all of its supervisory personnel on May 25, 1937, that no interference with the employees would be permitted.

In the *Link Belt* case, *supra*, the circumstances which this Court regarded as significant are summed up in the following quotation from the opinion (at p. 597):

> "The Board had the right to believe that the maintenance of the company union down to the date when Independent's membership drive was completed was not a mere coincidence. The circumstantial evidence makes credible the finding that complete freedom of choice on the part of the employees was effectively forestalled by maintenance of the company union by the employer until its abandonment would coincide with the recognition of Independent. The declared hostility towards an 'outside' union, the long practice of industrial espionage, the quick recognition of Independent, the support given Independent's membership drive by some of the supervisory staff, the prominence of company union representatives in that drive, the failure of the employer to wipe the slate clean and announce that the employees had a free choice, the belated instructions to the supervisory staff not to interfere—all corroborated the conclusion that the employer facilitated and aided the substitution of the union which it preferred for its old company union."

None of these circumstances are present in this case although the Board seeks to establish the similarity of the two cases by referring to the following facts:

(a) The statement of Holtzclaw in 1933 that organization of employees was deemed unnecessary.

(b) The activities of Bishop and [illegible] Transportation Department.

(c) The employment by Bishop's Department of a so-called labor spy.

(d) The discharge of Everhard M. Mann on June 1, 1937.

The Board in its brief (p. 12) contends that the lower court "agreed with the Board that the company had been *hostile* to outside unions (R. 1008)". But the court below used the word "opposed" instead of "hostile". It must not be overlooked that the court also held that such opposition was prior to the enactment of the National Labor Relations Act (R. 1008).

As to the events in controversy the lower court stated (R. 1013-1014):

> "It should be noted that, in the address of the president, the right of the employees to select representatives of their own choosing was made abundantly clear, and that the duty of the company and its officers to refrain from interference was properly emphasized; and we see nothing either in the address or in the surrounding circumstances from which the employees could have gained any contrary impression. *No hostility* towards any outside union was manifested." (Italics supplied.)

In the next instance the Board cites the lower court as agreeing with the Board (Brief, p. 12):

> "That, in violation of the Act, Superintendent Bishop had interrogated employees concerning union organization and activities."

Whereas, what the Court actually said was:

"that its superintendent of transportation in Norfolk had, in 1936, been guilty of [illegible]"

But the Court significantly added:

> "The questioning of employees by Bishop in 1936, however, is not a matter of sufficient importance, when standing alone, to justify the granting of a cease and desist order here, in view of the fact that any effect of such questioning had, unquestionably, been dissipated by the Company's action in 1937 and the formation of the association as a bargaining agency for employees" (R. 1019).

The failure of the Board to properly appreciate the facts in this case is clearly shown by the undue weight it gives to the activities of Bishop and Edwards. Such activities could not have had the effect claimed by the Board so far as the formation of I. O. E. is concerned, because Bishop was merely the superintendent of the Norfolk bus and rail operators, and had no supervision over or contact with any other employees of the Company. Actions that might have had significance, where all employees worked in a single plant, lose all probative value when it is sought to use them as a basis of a finding that they influenced the action of employees working in a different plant in a distant city. The attempt of the Board to use the activity of Bishop and Edwards as the basis of an inference that it affected the action of employees of Virginia Electric and Power Company, in Richmond, Petersburg, Fredericksburg, Virginia, and in Roanoke Rapids, North Carolina, must fail because the reasonable mind refuses to regard such facts as adequate to support such an inference.

Nowhere in the findings of fact of the Board is the statement made that the discharge of Everhard M. Mann had

any connection with the choice of the employees in joining I. O. E. It is stated (R. 970) that Mann was discharged for union activity, but nowhere does the Board hold that such discharge actually affected in any way the action of other employees. Now it is claimed that the discharge of Mann was one of the important factors upon which the Board relied. What has been said with respect to the alleged activity of Bishop and Edwards applies equally to the discharge of Mann. It does not supply evidence that has probative value on the question of what influenced the choice of 2500 employees to join I. O. E.

As to the activities of one Walters, who, it is claimed, was a labor spy, employed in the Norfolk Transportation Department, in the absence of any evidence that his existence was known to, or even suspected by, any employees of the company, and in view of the fact that he died before the address of May 24, 1937, it is impossible that he could have had any effect upon the choice of the employees to join I. O. E.

It, therefore, is clear that the absence from this case of all the significant circumstances related by this Court in the *Link Belt* case, *supra*, as sufficient support for the finding of the Board in that case that employee choice had been improperly affected by the attitude of the employer, requires the conclusion that such a finding in this case is not supported by substantial evidence.

I. O. E. was voluntarily designated by ninety per cent of all employees of the Virginia Electric and Power Company as their representative for collective bargaining, before it was recognized by the Company. This was not true of the organizations which were the subject of controversy in the cases of *N. L. R. B.* v. *Bradford Dyeing Assn.*, 310 U. S. 318; *N. L. R. B.* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240; and *N. L. R. B.* v. *Falk Corp.*, 308 U. S. 453, at p. 461.

As a matter of fact, at the time the committee from the I. O. E. first met the committee from the Company 2543 applications for membership were exhibited (R. 655). Prior to the meeting, on July 27, 1937, a statement furnished the Company showed 2429 members (Res. Ex. 13-R; R. 873-874). The total eligible membership was only about 2800.

Upon such a state of facts the company was required to recognize the I. O. E. as the bargaining agency of its employees. It had to consider the requests of I. O. E. for a closed shop as representing the wishes of ninety per cent of its employees. There was no hasty recognition of I. O. E. by the management.

In the case of *N. L. R. B.* v. *Bradford Dyeing Assn., supra,* the first meeting of employees was held in the office of the President on April 6th, and recognition was granted five days later, on April 11th, before there had been any election of officers and on the written statement of a temporary committee that it represented fifty-one per cent of the employees.

The Board has cited the case of *National Labor Relations Board* v. *Fansteel Metallurgical Corp., supra,* in support of its position that there is substantial evidence in this case that the Company dominated, interfered with and supported the I. O. E. This case will be recalled as one of national importance because this Court therein passed upon the legality of sit-down strikes. The facts in that case and in the case now before the Court are in no way similar. In the *Fansteel* case the employer refused to recognize or bargain with the Amalgamated Association of Iron, Steel and Tin Workers of North America which represented a majority of the shop employees. A sit-down strike ensued, and many of the strikers were discharged. This was followed by the re-opening of the plant and the quick organization on company premises of an independent union known as Rare Metal Workers of America, Local No. 1. Most of

the employees who formed this organization were either old employees who had been solicited to return to work on condition that they give up their outside union affiliation or new employees who were hired to take the place of men out on strike. This Court in its opinion (p. 250) states that the employer accorded to the independent union "various forms of support". In the present case there had been no antecedent refusal by the Company to bargain with an outside union, nor was there any national union claiming to represent a majority of the employees. There was no strike of any kind nor any replacement of old employees who belonged to national labor unions; in short, the atmosphere in the present case was totally different from that in the *Fansteel* case. The principal difference is that in the *Fansteel* case the Company refused to recognize an outside union which clearly represented a majority of its employees but did cooperate with an inside union. The two cases are notable chiefly for the dissimilarity of their facts.

In the case of *N. L. R. B.* v. *Falk Corp., supra*, three employees conferred with an attorney suggested to them by the company president, proceeded to incorporate a union, and notified the company that it was ready to bargain for some four hundred employees. Three days later the company recognized the so-called independent union as the bargaining unit for all employees upon the statement of the three incorporators, without proof that they represented a majority of the employees.

The Board has been critical throughout of the speed with which I. O. E. was formed, that "agreement was quickly reached" on a contract, and that the ultimate contract arrived at contained provisions "for a closed shop, check-off and wage increase". Yet the very absence of these things has been used as an argument by the Board in other cases to sustain an assumption of company domination. The Board overlooks the testimony in the record of the many

hours, night after night, that were put in by the employees to perfect an organization that would give them all the protection provided by the Wagner Act at one-fourth the cost were they to have gone the national union route.

III. The Board failed to attach any significance to the conceded fact that since organization there has been no domination of I. O. E. or interference with its administration by the employer (R. 1012).

The court below stated (R. 1012):

> "There is no contention that there is anything objectionable in the constitution or by-laws of the association or in the trade agreement arrived at with the company or in the manner in which it was negotiated; and it is not contended that the company contributes any support to the association or dominates it in any way or in any way interferes with the control exercised over it by its members."

There is no explanation offered of how an undominated union can be organized by Company domination. If the Company dominated the formation of I. O. E., then at what point in the space of less than a month, did I. O. E. cut the ap on strings? It is not contended that on July 19th, when I. O. E. formulated its demands at Ocean View, that the Company was interfering with or dominating the organization. It would strain credulity to say that any Company representative would have had a hand in asking for as much as I. O. E. demanded at that time or that any Company-dominated union would have held out for the terms finally written in the contract executed August 5th.

Certainly, it would seem that Company interference or domination would have cropped out in the period from August 5, 1937, to May, 1938. The Board had free access to all the records of I. O. E., including the minutes of all its meetings for weeks prior to the hearing before the Trial Examiner. Most of its representatives had been inter-

viewed by agents of the National Labor Relations Board. In spite of this, no evidence of Company domination or interference in the administration of I. O. E. was introduced, and no contention was made in the court below, and none is made in this Court, to the effect that there is any Company domination of or interference with I. O. E.

A peculiar feature of the attitude of the Board in this case has been its apparent willingness to override the wishes and rights of a vast majority of employees when it has received no complaints from the employees themselves. The Board seeks to justify the order of disestablishment because it claims that this is necessary to effectuate the purposes of the National Labor Relations Act. The primary purpose of that Act is expressed in Section 7 that guarantees certain rights to employees. The Board was set up for the purpose of protecting those rights. Brushing aside the technical position of the parties, the actual contest in this case is between the organizers of national Labor unions who were unable to persuade the employees of Virginia Electric and Power Company to join them, on one side, and the vast majority of the employees of Virginia Electric and Power Company who set up the I. O. E., on the other side. Those men are interested in the preservation of the pay increases, the overtime payments, the limitation of the work day and work week, the grievance procedure and the other advantages gained in their contract.

The organization is ordered to be disestablished and its contract invalidated in spite of the wishes of ninety per cent of the employees of the Company who chose it for their bargaining agent, because the Labor Board infers that the Company by some subtle and unexplained influence undermined the will of its employees and misled them into forming an independent organization. The Board seeks to substitute its judgment in this case for that of the employees themselves. Because it believes the choice these

employees made is unwise, it infers that such choice must, in some unexplained manner, have been corrupted by the employer. The choice of a bargaining agent was for the employees and not for the Board. Since the agency chosen was organically sound and comes within all the requirements of the Act, the order of the Board disestablishing I. O. E. violates Section 7 of the Act that guarantees employees "the right of self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection". (29 *U. S. C. A.*, 157.)

Summary and Conclusion.

The fundamental issue in this case is whether facts have been established that furnish a lawful foundation for the findings of the Board. There are no principles applied by the court below that have not already received the approval of this Court. The issue was whether there was substantial evidence to support the finding of the Board that the Company had dominated and interfered with the formation and administration of the I. O. E. That court followed the definition of domination and interference given by this Court in the case of *T. & N. O. R. Co.* v. *Railway Clerks*, 281 U. S. 548, 568. It applied to the evidence the test of substantial evidence in accordance with the principles laid down by this Court in the case of *Consolidated Edison Company of New York* v. *National Labor Relations Board*, 305 U. S. 197, 299). Noting the absence of any evidence of any manifestation of hostility by the Company towards any outside unions or any suggestion that "the company through its supervisory employees, or otherwise, aided or assisted in any way" in the organization of I. O. E., the court below found that there was no substantial evidence to support the finding of the Board.

The Board has brought this case before this Court, and the burden is upon the Board to establish any error committed by the Circuit Court of Appeals.

It is respectfully submitted that no error has been established, and that the decrees of the Circuit Court of Appeals should be affirmed.

THE INDEPENDENT ORGANIZATION OF EMPLOYEES
OF VIRGINIA ELECTRIC AND POWER COMPANY,
By WM. EARLE WHITE,
PAUL E. HADLICK,
Counsel.

(7202)

SUPREME COURT OF THE UNITED STATES.

Nos. 25 and 26.—October Term, 1941.

National Labor Relations Board, Petitioner, 25 *vs.* Virginia Electric and Power Company.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.
National Labor Relations Board, Petitioner, 26 *vs.* The Independent Organization of Employees of the Virginia Electric and Power Company.	

[December 22, 1941.]

Mr. Justice Murphy delivered the opinion of the Court.

Upon the usual proceedings[1] had pursuant to section 10 of the National Labor Relations Act[2] the Board made substantially the following findings of fact:

For years prior to the events in this case the Virginia Electric and Power Company (hereinafter called the Company) was hostile to labor organizations. From 1922, when a strike was unsuccessful by a nationally affiliated union,[3] until the formation of the Independent Organization of Employees (hereinafter called the Independent) in 1937 there was no labor organization among its em-

[1] These proceedings were instituted on charges and amended charges filed in 1937 and 1938 by the Transport Workers Union of America, affiliated with the Congress of Industrial Organizations, by the Amalgamated Association of Street, Electrical Railway, and Motor Coach Employees of America, and by the International Brotherhood of Electrical Workers, the latter two being affiliated with the American Federation of Labor. The complaint, as amended, charged that the employer, respondent in No. 25, had engaged in unfair labor practices within the meaning of section 8(1), (2), and (3) of the Act; 29 U. S. C. § 158(1), (2), and (3). The Independent Organization of Employees of the Virginia Electric and Power Company, respondent in No. 26, was allowed to intervene with respect to the 8(2) charge, was represented by counsel and participated throughout the proceedings.

[2] 49 Stat. 449; 29 U. S. C. § 151 *et seq.*

[3] Amalgamated Association of Street, Electrical Railway, and Motor Coach Employees of America.

ployees. Shortly after the enactment of the National Industrial Recovery Act in 1933, Holtzclaw, the president of the Company, spoke to the employees and stated that any organization among them was "entirely unnecessary". Until his death in May 1937 the Company utilized the services of one Walters, an employee of the Railway Audit and Inspection Company who prior to the effective date of the Act admittedly furnished a report on the labor activity of the employees to the Company. In 1936 Bishop, Superintendent of Transportation in Norfolk, interrogated employees concerning union activities. On April 26, 1937, shortly after the Act was upheld,[4] and an A. F. of L. organizer had appeared, the Company posted a bulletin[5] throughout its operations appealing to the employees to bargain with the Company directly without the intervention of an "outside" union, and thereby coerced its employees. In response to this bulletin several requests for increased

[4] National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, and companion cases.

[5] "April 26, 1937.

To the Employees of the Company:

As a result of recent national labor organization activities and the interpretation of the Wagner Labor Act by the Supreme Court, employees of companies such as ours may be approached in the near future by representatives of one or more such labor organizations to solicit their membership. Such campaigns are now being pressed in various industries and in different parts of the country and strikes and unrest have developed in many localities. For the last fifteen years this company and its employees have enjoyed a happy relationship of mutual confidence and understanding with each other, and during this period there has not been any labor organization among our employees in any department, so far as the management is aware. Under these circumstances, we feel that our employees are entitled to know certain facts and have a statement as to the Company's attitude with reference to this matter.

The Company recognizes the right of every employee to join any union that he may wish to join, and such membership will not affect his position with the company. On the other hand, we feel that it should be made equally clear to each employee that it is not at all necessary for him to join any labor organization, despite anything he may be told to the contrary. Certainly, there is no law which requires or is intended to compel you to pay dues to, or to join any organization.

This Company has always dealt with its employees in full recognition of the right of every individual employee, or group of employees, to deal directly with the Company with respect to matters affecting their interests. If any of you, individually or as a group, at any time, have any matter which you wish to discuss with us, any officer or department head will be glad, as they always have been, to meet with you and discuss them frankly and fully. It is our earnest desire to straighten out in a friendly manner, as we have done in the past, whatever questions you may have in mind. It is reasonable to believe that our interests are mutual and can best be promoted through confidence and cooperation.

(signed) J. G. HOLTZCLAW,
President."

wages and better working conditions were received.[6] The Company decided to withhold action on those requests and directed its employees to select representatives to attend meetings at which Company officials would speak on the Wagner Act. These representatives met in Norfolk and Richmond on May 24 and were addressed by high Company officials who read identical speeches[7] stressing the desirability of forming a bargaining agency. At the Richmond meeting it was announced that any wage increase granted would be retroactive to June 1. By the substance of the speeches and the mechanics of the meetings the Company gave impetus to and as-

---

[6] Included in those requests was a petition from a majority of the Norfolk transportation employees which was the result of two meetings on Company property during working hours on May 11, 1937, in response to unsigned notices placed in the dispatcher's office by A. R. Ruett, a car operator. Both Ruett, and R. E. Elliott, who assumed the leadership in those meetings, testified that Superintendent Bishop had urged them to form an inside organization after warning them against the C. I. O. Bishop denied this, and the Board made no finding.

[7] "A substantial number of its employees representing various departments and various occupations have approached the Company with the request that the Company consider with them the matter of their working conditions and wages. In other words, they have requested collective bargaining. The Company's position with respect to this was recently stated in a posted bulletin.

"In a company such as ours, if an individual operator, for example, should ask for himself better working conditions or wages, this Company could not comply with his request without also making the same concessions to other similar operators. In such a case the operator who appealed individually would, as a practical matter, be bargaining collectively for all of his group, which is not the logical procedure.

"This Company is willing to consider the requests mentioned above but feels that, in fairness to all of its employees and to itself, it should at the same time consider other groups who have not yet come to it. If the approaching negotiations are to be intelligent and fair to all properly concerned, they should be conducted in an orderly way, and all interested groups should be represented in these discussions by representatives of their own choosing, as provided in the Wagner National Labor Relations Act, which provides as follows:

> 'SEC. 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.'

"The Wagner Act applies only to employees whose work is in or directly affects interstate commerce and to companies engaged in interstate commerce. Counsel for this Company advise us that in their opinion the provisions of the Act do not apply to local transportation employees, to gas employees in Norfolk, or to certain strictly local employees of the light and power department. In spite of this, the Company wants to make it perfectly clear that its policy is one of willingness to bargain with its employees in any manner satisfactory to the majority of its employees and that no employee will be discriminated against because of any labor affiliations he desires to make.

"The petitions and representations already received indicate a desire on the part of these employees at least to do their own bargaining, and we are taking this means of letting you know our willingness to proceed with such

sured the creation of an "inside" organization and coerced its employees in the exercise of their rights guaranteed by section 7 of the Act. Meetings, arranged with the cooperation of Company supervisors, on Company property and, in some instances on Company time, followed, at which the May 24 speeches were reported to the men who voted to form an "inside" organization and selected committees for that purpose. These committees met on Company property until June 15 when the constitution of the Independent was adopted.

While the Independent was in the process of organization, Edwards, a supervisor, kept meetings of a rival C.I.O. union under surveillance and warned employees that they would be discharged for "messing with the C.I.O." On June 1 Manr, a member of the C.I.O. who had openly protested against an "inside" union at one of the May 11 meetings (see note 6 *ante*) attended by Superintendent Bishop's son, Warren, was discharged for union activities.

On June 17 application cards for the Independent were distributed throughout the entire system of the Company and many were signed on Company property and time. Within three weeks after the adoption of the constitution of the Independent a majority of the employees filled out application cards. By July 13 the organization was complete and permanent committeemen had been elected. A majority of those committeemen had been present at the May 24 meetings. On July 19 the Independent notified the Company that it represented a majority of the employees and submitted a proposed contract. Negotiations were begun on July 30 and agreement was reached by midnight of the following day. The contract was formally executed on August 5, and provided, *inter alia*, for a closed shop, a check-off, and a wage increase. On August 20 the Company paid $3,784.50 to the Independent although it had not yet deducted that entire amount from the employees' wages.

---

bargaining in an orderly manner. In order to progress, it would seem that the first step necessary to be taken by you is the formation of a bargaining agency and the selection of authorized representatives to conduct this bargaining in such an orderly manner.

"The Wagner Labor Act prohibits a company from 'dominating or interfering with the formation or administration of any labor organization or contribute (*sic*) financial or other support to it.'

"In view of your request to bargain directly with the Company and, in view of your right to self-organization as provided in the law, it will facilitate negotiations if you will proceed to set up your organization, select your own officers and adviser, adopt your own by-laws and rules, and select your representatives to meet with the Company officials whenever you desire."

On November 4, the date upon which the closed shop provision became effective, the Company discharged two employees, Staunton and Elliott, because they refused to join the Independent. In March, 1938, it discharged another employee, Harrell, for his membership and activity in an outside union.

Upon the basis of these findings and the entire record in the case the Board concluded that the Company had committed unfair labor practices within the meaning of section 8(1), (2) and (3) of the Act. Its order directed the Company to cease and desist from its unfair labor practices and from giving effect to its contract with the Independent, to withdraw recognition from and disestablish that organization, to reinstate with back pay the four wrongfully discharged employees, to reimburse each of its employees who was a member of the Independent in the amount of the dues and assessments checked off his wages by the Company on behalf of the Independent, and to post appropriate notices.

The Company and the Independent filed separate petitions in the court below to review and set aside the Board's order. The Board answered and requested enforcement of its order against the Company. The court below denied enforcement to any part of the Board's order, completely setting it aside.[8] We granted the petition for writs of certiorari because the case was thought to present important questions in the administration of the Act. 312 U. S. 677.

The Company is engaged in the business of generating and distributing electrical energy in eastern Virginia and north-eastern North Carolina. It also furnishes illuminating gas to customers in the vicinity of Norfolk, Virginia, and operates transportation services in Richmond, Norfolk, Portsmouth and Petersburg. It does not here renew the contention, correctly decided against it by the court below,[9] that the jurisdiction of the Board does not extend to its employees in the gas and transportation departments.

Domination of the Independent

The command of section 10(e) of the Act that "the findings of the Board as to the facts, if supported by evidence, shall be conclusive" precludes an independent consideration of the facts.

[8] Virginia Electric & Power Co. *v.* National Labor Relations Board, 115 F. 2d 414.

[9] *Ibid.*, 415-416.

Bearing this in mind we must ever guard against allowing our views to be substituted for those of the agency which Congress has created to administer the Act. But here the Board's conclusion that the Independent was a Company dominated union seems based heavily upon findings which are not free from ambiguity and doubt. We believe that the Board, and not this Court, should undertake the task of clarification.

The Board specifically found that the bulletin of April 26 and the speeches of May 24 "interfered with, restrained and coerced" the Company's employees in the exercise of their rights guaranteed by section 7 of the Act. The Company strongly urges that such a finding is repugnant to the First Amendment. Neither the Act nor the Board's order here enjoins the employer from expressing its view on labor policies or problems, nor is a penalty imposed upon it because of any utterances which it has made. The sanctions of the Act are imposed not in punishment of the employer but for the protection of the employees. The employer in this case is as free now as ever to take any side it may choose on this controversial issue. But certainly conduct, though evidenced in part by speech, may amount in connection with other circumstances to coercion within the meaning of the Act. If the total activities of an employer restrain or coerce his employees in their free choice, then those employees are entitled to the protection of the Act. And in determining whether a course of conduct amounts to restraint or coercion, pressure exerted vocally by the employer may no more be disregarded than pressure exerted in other ways. For "Slight suggestions as to the employer's choice between unions may have telling effect among men who know the consequences of incurring that employer's strong displeasure." *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 78.

If the Board's order here may fairly be said to be based on the totality of the Company's activities during the period in question, we may not consider the findings of the Board as to the coercive effect of the bulletin and the speeches in isolation from the findings as respects the other conduct of the Company. If the Board's ultimate conclusion is based upon a complex of activities, such as the anti-union background of the Company, the activities of Bishop, Edwards' warning to the employees that they would be discharged for "messing with the C.I.O.", the discharge of Mann, the quick

formation of the Independent, and the part which the management may have played in that formation, that conclusion would not be vitiated by the fact that the Board considered what the Company said in conjunction with what it did. The mere fact that language merges into a course of conduct does not put that whole course without the range of otherwise applicable administrative power. In determining whether the Company actually interfered with, restrained, and coerced its employees the Board has a right to look at what the Company has said as well as what it has done.

But from the Board's decision we are far from clear that the Board here considered the whole complex of activities, of which the bulletin and the speeches are but parts, in reaching its ultimate conclusion with regard to the Independent. The Board regarded the bulletin on its face as showing a marked bias against national unions by implying that strikes and unrest are caused by the organizational campaigns of such bodies, by stressing the "happy relationship of mutual confidence and understanding" prevailing in the absence of organization since the defeat of the Amalgamated in 1922, and by emphasizing the negative "right" of the employees to refrain from exercising their rights guaranteed under the Act after paying "lip service" to those rights. Summing up its conclusions the Board said: "We interpret the bulletin as an appeal to the employees to bargain with the respondent directly, without the intervention of any 'outside' union. We find that by posting the bulletin the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

The Board was of the view that the speeches delivered in the meetings of May 24 provided the impetus for the formation of a system-wide organization, that they re-emphasized the Company's distaste for "outside" organizations by referring to the bulletin, and that, after quoting the provision of the Act forbidding employer domination of labor organizations, they suggested that the employees select their "own" officers, and adopt their "own" by-laws and rules. The Board's finding was: "We find that at the May 24 meetings the respondent urged its employees to organize and to do so independently of 'outside' assistance, and that it thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

It is clear that the Board specifically found that those utterances were unfair labor practices, and it does not appear that the Board

raised them to the stature of coercion by reliance on the surrounding circumstances. If the utterances are thus to be separated from their background, we find it difficult to sustain a finding of coercion with respect to them alone. The bulletin and the speeches set forth the right of the employees to do as they please without fear of retaliation by the Company. Perhaps the purport of these utterances may be altered by imponderable subtleties at work which it is not our function to appraise. Whether there are sufficient findings and evidence of interference, restraint, coercion, and domination without reference to the bulletin and the speeches, or whether the whole course of conduct evidenced in part by the utterances was aimed at achieving objectives forbidden by the Act, are questions for the Board to decide upon the evidence.

Here we are not sufficiently certain from the findings that the Board based its conclusion with regard to the Independent upon the whole course of conduct revealed by this record. Rather it appears that the Board rested heavily upon findings with regard to the bulletin and the speeches the adequacy of which we regard as doubtful. We therefore remand the cause to the Circuit Court of Appeals with directions to remand it to the Board for a redetermination of the issues in the light of this opinion. We do not mean to intimate any views of our own as to whether the Independent was dominated or suggest to the Board what its conclusion should be when it reconsiders the case. Since the Board rested the remainder of its order in large part on its findings with respect to the domination of the Independent, we do not at this time reach the other parts of the Board's order, including the command that the checked-off dues and assessments should be refunded.

Reversed and remanded.

Mr. Justice ROBERTS and Mr. Justice JACKSON took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.